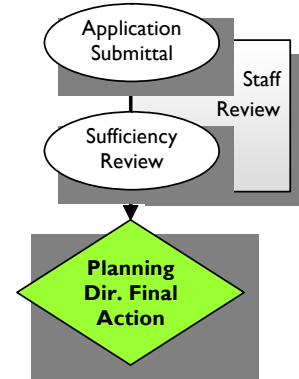


Article 3 | Applications and Permits

Sec. 3.1 Interpretation of this Ordinance

3.1.1 Applicability

- A. When uncertainty exists, the director of the appropriate department, or designee, as identified below, shall be authorized to make all interpretations concerning the provisions of this Ordinance. In making these interpretations, all provisions shall be:
1. Considered as minimum requirements;
 2. Liberally construed in favor of the governing body;
 3. Deemed neither to limit nor repeal any powers granted under State statutes; and
 4. Require application of the more stringent provisions wherever the provisions of this ordinance appear to impose conflicting provisions that cannot otherwise be reconciled.



B. **Interpretation Authority**

The Planning Director shall make all interpretations of this Ordinance, but shall not make interpretations regarding the following sections:

1. Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, and Sec. 15.5, Sedimentation and Erosion Control Enforcement and Penalties, the County Engineer, or designee, shall be authorized to make all interpretations concerning the provisions of these sections.
2. Sec. 8.4, Floodplain and Flood Damage Protection Standards, the Inspections Director, acting as the Floodplain Administrator, or designee, in consultation with the Planning Director, shall be authorized to make all interpretations related to this section.
3. Paragraph 12.3.1, Street Layout, the Public Works Director or City Transportation Director or designee, as applicable, shall be authorized to make all interpretations concerning the provisions of this section.
4. Sec. 12.8, Stormwater Management, the Public Works Director or County Engineer or designees, as appropriate, shall be authorized to make all interpretations concerning the provisions of this section.
5. All interpretations of matters relating to the North Carolina Building Code shall be made by the Inspections Director or designee.
6. The Planning Director may defer interpretations of this Ordinance to appropriate City and/or County officials.

3.1.2 Application Requirements

A request for interpretation shall be submitted in writing.

3.1.3 Action by Planning Director

- A. The Planning Director shall:
 - 1. Review and evaluate the request in light of the text of this UDO, the Official Zoning Map, the Comprehensive Plan and any other relevant information;
 - 2. Consult with the Inspections Director or designee and coordinate with other staff, including the City or County Attorney, as necessary; and
 - 3. Render an opinion.
- B. The interpretation shall be provided to the applicant in writing.

3.1.4 Official Record

The Planning Director or designee shall maintain an official record of all interpretations. The record of interpretations shall be available for public inspection during normal business hours.

3.1.5 Appeal

Final action on an official interpretation of this Ordinance by the Planning Director or designee may be appealed in accordance with Sec. 3.15, Appeal of Administrative Decision.

Sec. 3.2 Common Review Procedures

3.2.1 Applicability

The review procedures described below apply to the types of applications listed below, as may be limited by the individual subsections that follow.

- A.** Comprehensive Plan Amendment
- B.** Zoning Map Change
- C.** Subdivision, including Conservation Subdivision
- D.** Site Plan
- E.** Special Use Permit
- F.** Sign Permit
- G.** Temporary Use Permit
- H.** Home Occupation Permit
- I.** Variance
- J.** Appeal of Administrative Decision
- K.** Historic District/Landmark Designation
- L.** Certificate of Appropriateness
- M.** UDO Text Amendment
- N.** Statutory Vested Rights Determination
- O.** Floodplain Development Permit
- P.** Limited Agriculture Permit (City Only)
- Q.** Architectural Review

3.2.2 Pre-Application Conference

- A.** Before submitting an application for development approval, it is recommended that each applicant schedule a pre-application conference with the Planning Director or designee to discuss the procedures, standards and regulations required for development approval in accordance with of this Ordinance.
- B.** A mandatory pre-application conference with the Planning Director or designee shall be required for the following development reviews:
 - 1.** Comprehensive Plan amendments not initiated by the City or County;
 - 2.** Zoning map changes not initiated by the City or County;
 - 3.** Conservation subdivision (after preparation of site analysis map);
 - 4.** Design, minor, or major special use permit;
 - 5.** Variance;
 - 6.** Landmark designation; and
 - 7.** Minor or major certificate of appropriateness.

- C. A mandatory pre-application conference with the City Transportation Director or designee shall be required for the following development reviews:
 - 1. Traffic impact analysis; and
 - 2. Transportation special use permit.

3.2.3 Neighborhood Meeting

- A. All applicants shall hold a neighborhood meeting prior to submitting an application, but after a pre-application conference, for the following development reviews:
 - 1. Comprehensive Plan amendment;
 - 2. Zoning map change that requires a TIA pursuant to Sec. 3.3, Traffic Impact Analysis;
 - 3. Conservation subdivision; and
 - 4. Other applications as may be specified elsewhere in this Ordinance.
- B. The purpose of the neighborhood meeting shall be to inform the neighborhood of the nature of the proposed land use and development features, explain the site plan if any, and solicit comments. This requirement shall not mean that all association members, owners or tenants are required to attend such a meeting.
- C. The applicant shall provide notice to the following by first class mail at least ten days prior to the date of the neighborhood meeting:
 - 1. Each owner of record of any land located within 1,000 feet of the property for which the development approvals are sought; and
 - 2. Neighborhood associations located within 1,000 feet of the site which have registered with the Planning Department to receive notice.
- D. The neighborhood meeting notice shall include at a minimum the following:
 - 1. The applicant's name and telephone number;
 - 2. The street address of the site with an identification map;
 - 3. A clear explanation of what the applicant is proposing; and
 - 4. The date, time, and location of the meeting.
- E. The Planning Director or designee may develop administrative regulations setting forth guidelines pertaining to any additional requirements for the conduct of the meeting. Such guidelines shall be subject to review by the Joint City-County Planning Committee.

3.2.4 Application Requirements

The following requirements shall apply to all applications for development approval identified in paragraph 3.2.1, Applicability.

- A. **Forms**

Applications required under this Ordinance shall be submitted on forms and in such numbers as required by the appropriate department. All forms shall include, at a minimum, the following information:

 - 1. Contact information for the individual or firm submitting the application.

2. Contact information for the individual or firm on whose behalf the application is being submitted.
3. Identification of the property affected by the application, such as a legal description, address, or PIN as may be appropriate.
4. Any other information required by the director of the appropriate department, or designee, or the provisions of this Ordinance.

B. Fees

1. All applications and associated fees shall be filed with the appropriate department.
2. Filing fees shall be established from time to time to defray the actual cost of processing the application.
3. An applicant who has paid the appropriate fee pursuant to the submission of an application, but who chooses to withdraw such application prior to its distribution for review shall be entitled to a refund of the total amount paid, less ten percent for administrative costs, upon written request to the appropriate department. Once review has begun, no refund shall be available, except that unused notice surcharges shall be refunded less ten percent for administrative purposes. No refund of technology surcharges shall be provided.

C. Applications Sufficient for Processing

1. Applications shall contain all required information as described on forms available from each department involved in the review process, unless modified by the department, in writing, pursuant to 2, below. Incomplete applications may be reviewed in extraordinary circumstance.
2. The presumption shall be that all of the information required in the application forms is necessary to satisfy the requirements of this section. However, it shall be recognized that each application is unique, and therefore more or less information may be required according to the needs of the particular case. The applicant may rely on the recommendations of the appropriate department as to whether more or less information should be submitted.
3. Once the application has been determined sufficient for processing, copies of the application shall be referred by the appropriate department to the appropriate - reviewing entities.
4. The director of the appropriate department, or designee, may require an applicant to present evidence of the authority to submit an application.
5. An application shall be considered to have been accepted for review only after it has been determined to be complete as provided above, not upon submission to the appropriate department.

D. Application Deadline

Applications sufficient for processing shall be submitted to the director of the appropriate department, or designee, in accordance with the established schedule. Schedules indicating submittal dates shall be developed each year and made available to the public.

E. Staff Consultation after Application Submitted

1. Upon receipt of an application sufficient for processing, the director of the appropriate department, or designee, shall review the application and confer with the applicant to ensure an understanding of the applicable requirements of this Ordinance; that the applicant has submitted all of the information they intend to submit; and that the application represents precisely and completely what the applicant proposes to do.
2. Once the applicant indicates that the application is as complete as the applicant intends to make it, the application shall be placed before the appropriate approving authority in accordance with standard procedures. However, if the director of the appropriate department, or designee, believes the application is incomplete, a recommendation to deny the application on that basis shall be provided to the appropriate approving authority.

F. Related Applications

1. Related applications necessary for development approvals may be filed and reviewed simultaneously, at the option of the applicant. Any application that also requires a variance, special use permit, or certificate of appropriateness shall not be eligible for final approval until the variance, special use permit, or certificate of appropriateness has been granted.
2. Related applications submitted simultaneously are subject to approval of all other related applications; denial or disapproval of any concurrently submitted application shall stop consideration of any related applications until the denied or disapproved application is resolved.

3.2.5 Notice and Public Hearings

A. Summary of Notice Required

Notice shall be required for applications for development approval as shown in the table below.

Procedure	Published	Mailed	Posted
Comprehensive Plan Amendment	✓	✓	✓ ²
Zoning Map Change	✓	✓	✓
Site Plan		✓ ¹	
Design or Minor Special Use Permit	✓	✓	✓
Major or Transportation Special Use Permit	✓	✓	✓
Variance	✓	✓	✓
Appeal of Administrative Decision	✓	✓	
Historic District Designation	✓	✓	
Historic Landmark Designation	✓	✓	
Certificate of Appropriateness			
Minor		✓	
Major	✓	✓	
UDO Text Amendment	✓	✓	
Vested Rights Determination	✓	✓	✓
Evaluation and Assessment Report	✓		

¹ Mailed notice shall be required only for major site plans pursuant to paragraph 3.7.3B, Major Site Plans.

² Posting is required only for amendments that change a Tier designation without an associated zoning map change.

B. Public Notice Requirements

1. Published Notice

An advertisement shall be placed by the Planning Department in a local newspaper of general circulation once a week for two successive calendar weeks, the first notice being published not less than ten days nor more than 25 days before the date fixed for the public hearing.

2. Mailed Notice

a. The director of the appropriate department or designee shall notify by first class mail:

- (1) The applicant and all property owners, if applicable, of the property under consideration; and
- (2) All property owners, as indicated by County tax listings of property ownership, within the applicable notification distance from the property under consideration as specified in the table below.

Procedure	Notification Distance (ft)
Comprehensive Plan Amendment	1,000
Zoning Map Change	600
Initial Zoning	100
Site Plans ¹	600
Board of Adjustment Hearings	600
Governing Body Quasi-Judicial Hearings	600
Historic District Designation	600 and all subject properties
Historic Landmark Designation and Certificate of Appropriateness	All adjacent properties ²
Vested Rights Determination	Subject property and all adjacent properties ²

¹ Mailed notice shall be required only for major site plans pursuant to paragraph 3.7.3B, Major Site Plans.

² Adjacent properties shall include properties directly across the street from the subject property (where applicable).

- b. For amendments to the Comprehensive Plan, Zoning Map Changes, Site Plans that require mailed notice pursuant to paragraph 3.2.5A, Summary of Notice Required, and Major Special Use Permits, notice shall also be provided to any organization or individual located within 1,000 feet of the site under consideration which is registered to receive notice pursuant to paragraph 3.2.5D, Registration to Receive Notice. Notice shall be provided to each organization or individual in the manner specified in its registration information, which may be first class mail, electronic mail, or other manner offered by the Planning Director.
- c. For UDO Text Amendments, notice shall be provided to any organization or individual that is registered to receive such notice pursuant to paragraph 3.2.5D, Registration to Receive Notice. Notice shall be provided to each organization or individual in the manner specified in its registration information, which may be first class mail, electronic mail, or other manner offered by the Planning Director.
- d. The notice shall be mailed at least 14 but not more than 25 days prior the date of the public hearing.
- e. Mailed notice under this section shall not be required if a zoning map change directly affects more than 500 properties owned by a total of at least 500 different property owners, and the Planning Director or designee elects to use the following expanded published notice requirements:
 - (1) An advertisement of not less than ½-page may be placed in a local newspaper of general circulation once a week for two successive calendar weeks, the first notice being published not less than ten days nor more than 25 days before the date fixed for the public hearing.
 - (2) In addition to the published notice, the Planning Director or designee shall post one or more signs on or immediately adjacent to the subject area

reasonably calculated to give public notice of the proposed change in accordance with paragraph 4.c. , Posted Notice, below rather than the notice required pursuant to subsection 3, Posted Notice (Sign), below.

- (3) Mailed notice shall be provided by first class mail to property owners who reside outside of the newspaper's circulation area.

3. Posted Notice (Sign)

A sign noticing the public hearing shall be prominently posted by the director of the appropriate department, or designee, not less than 14 days prior to the public hearing at which the application shall be reviewed. The sign shall be posted on the property or at a point visible from the nearest public street. In the case of multiple parcels, sufficient signs shall be posted to provide reasonable notice to interested persons.

4. Content of Notice

For all applications for development approval except UDO text amendments, the notices listed above shall contain the following specific information.

a. Published or Mailed Notice

A published or mailed notice shall provide at least the following:

- (1) Parcel Identification Number;
- (2) The address of the subject property (if available);
- (3) The general location of the land that is the subject of the application, which may include, a location map;
- (4) A description of the action requested;
- (5) Where a zoning map change or a Comprehensive Plan amendment is proposed, the current and proposed districts;
- (6) The time, date and location of the public hearing;
- (7) A phone number to contact the Planning Director or designee;
- (8) A statement that interested parties may appear at the public hearing; and
- (9) A statement that substantial changes to the proposed action may be made following the public hearing.

b. Published Notice for UDO Text Amendments

A published notice shall include the following specific information:

- (1) A summary description of the proposed change;
- (2) The time, date and location of the public hearing;
- (3) A phone number to contact the Planning Director or designee;
- (4) A statement that interested parties may appear at the public hearing; and
- (5) A statement that substantial changes to the proposed action may be made following the public hearing.

c. Posted Notice

Required posted notices shall indicate the following:

- (1) A case number;
- (2) Type of action; and
- (3) A phone number to contact the Planning Director, or designee.

C. Minor Defects in Notice

Minor defects in notice shall not impair the notice or invalidate proceedings pursuant to the notice if a bona fide attempt has been made to comply with applicable notice requirements.

D. Registration to Receive Notice

Upon adoption of this amended section, and every two years thereafter, any organization or individual may pay an established fee, if applicable, and register with the Planning Director to receive notice of all applications for development approval requiring mailed notice and other notice required under this Ordinance. To be eligible for registration, the applicant must provide the information required by the Planning Director, including manner of notice, whether first class mail, electronic mail, or other manner offered by the Planning Director. Notice will be provided in the manner specified in the registration information. Each organization or individual is responsible for providing updated information to the Planning Director as necessary, and must re-register and pay the established fee, if applicable, every two years in order to continue receiving notice.

E. Required Hearing

1. A legislative public hearing or a quasi-judicial hearing shall be required for development review as shown in the table below.

Applications for Approval	Historic Preservation Commission	Board of Adjustment	Planning Commission	Governing Body
Transportation Special Use Permit				✓ ¹
Comprehensive Plan Adoption/Amendment			✓	✓
Zoning Map Change			✓	✓
Minor and Design Special Use Permit		✓ ¹		
Major Special Use Permit				✓ ¹
Variance		✓ ¹		
Appeal of Administrative Decision		✓ ¹		
Historic District Designation	✓		✓	✓
Historic Landmark Designation	✓			✓
Certificate of Appropriateness	✓ ²			
UDO Text Amendment			✓	✓
Vested Rights Determination				✓

¹ Requires a quasi-judicial hearing.

² See Sec. 3.17, Certificate of Appropriateness, for the type that requires a public hearing.

2. The day of the public hearing shall be considered the day the hearing is originally advertised for, unless a deferral is granted by the governing body upon a request that follows the procedures set forth in this Ordinance regarding timely submission of requests for deferrals.

3.2.6 Notice of Decision

Within seven days after a decision is made, or as otherwise required in this Ordinance, a copy of the decision shall be provided to the applicant and filed in the appropriate department to be available for public inspection during regular office hours.

Sec. 3.3 Traffic Impact Analysis (TIA)

3.3.1 Applicability

Unless exempted below, a traffic impact analysis (TIA) shall be required for changes of use to determine if roadway improvements will be required, zoning map changes utilizing a development plan, site plans, and preliminary plats that can be anticipated to generate at least 150 vehicle trips at the peak hour (as determined by Institute of Transportation Engineers Standards). Trips generated by separate developments meeting the criteria of paragraph 3.3.3, TIA Submission for Projects with Cumulative Impacts, shall be considered cumulatively.

3.3.2 Exemptions

The following projects shall not be required to submit a TIA:

- A.** Projects located within the Downtown Tier.
- B.** Developments that submitted a TIA in conjunction with a zoning map change or previously approved site plan, special use permit, or other plan, where the TIA remains valid, consistent with the provisions of paragraph 3.3.6, Period of Validity.
- C.** Redevelopment of any site on which the increase in traffic at peak hour represents an increase of less than 150 trips from the previous development, if the redevelopment is initiated within 12 months of the cessation of use of the previous development so long as no access road that leads directly to the site is operating at a level of service worse than the jurisdiction's adopted level of service.

3.3.3 TIA Submission for Projects with Cumulative Impacts

A. Unified, Phased, or Otherwise Aggregated Developments

An applicant shall be required to submit a TIA, or obtain a transportation special use permit (TSUP) pursuant to Sec. 3.9, Special Use Permit, for a development plan, site plan, preliminary plat, special use permit, or other similar plan that does not otherwise meet the thresholds for submission of a TIA or for obtaining a TSUP if the development approval is for a project that:

- 1.** Shares features such as site access or other roadways, design elements, or other infrastructure with nearby unbuilt, but pending developments evidenced by valid, approved site plans or preliminary plats, or active site plan or preliminary plat submittals; and,
- 2.** When complete, will function in conjunction with such nearby developments as a single project, the impact on the infrastructure of which would exceed the thresholds for preparation of a TIA.

B. Determination

The City Transportation Director, or designee shall determine whether a development application meets the criteria in paragraph A, above, and shall determine whether one TIA shall be required for all of the aggregated development, or whether multiple TIAs may be employed for separate phases of the development.

3.3.4 Pre-Application Conference

The applicant shall schedule a pre-application meeting with the City Transportation Director or designee to discuss procedures, standards, and regulations required for TIA submittal and approval.

3.3.5 Requirements

A. Content

The City Transportation Director or designee shall set forth specific guidelines for preparation of TIAs. A TIA shall, at a minimum, provide the following information:

1. An estimate of the traffic generated as a result of the proposed development;
2. An analysis of the existing street system serving the proposed development; and
3. An assessment of the improvements needed to the existing street system in order to support the traffic anticipated to be generated by the proposed development.

B. Preparer

A TIA shall be prepared by a registered professional engineer with experience in traffic engineering.

C. Sources of Data

Estimates of vehicle trips shall be calculated based on trip generation rates from the most recent edition of the Trip Generation Manual published by the Institute of Transportation Engineers, unless an alternative source of information is approved by the City Transportation Director or the NCDOT.

3.3.6 Period of Validity

A TIA shall be valid for a specific site for no more than eight years, so long as no significant modifications to the development proposed for the site that substantially increase the traffic impact are made. A TIA submitted in connection with a project that is accessed by a road that is operating at a level of service lower than the jurisdiction's adopted level of service shall be valid for no more than five years, however.

3.3.7 Coordination with Zoning Map Changes, Site Plans, and Preliminary Plats

Transportation mitigation measures may be required to address issues raised by a TIA, or as part of the approval of a Transportation Special Use Permit (TSUP.) Such measures may include, but not be limited to, onsite and offsite improvements related to reduction of traffic impact on the surrounding road system, bicycle facilities, pedestrian movement, and the environment. These measures shall be conditions of development approval. Deletion or modification of these conditions shall require the same approval process that was required for the original project, unless the approved mitigation measure is deemed to conflict with NCDOT or City Transportation Department requirements, in which case they shall be modified to resolve the conflicts through submittal of a revised site plan or preliminary plat, as applicable.

3.3.8 Coordination with a Transportation Special Use Permit (TSUP)

Projects that require a TIA may also require a TSUP pursuant to Sec. 3.9, Special Use Permit.

Sec. 3.4 Comprehensive Plan Adoption/Amendment

3.4.1 Applicability

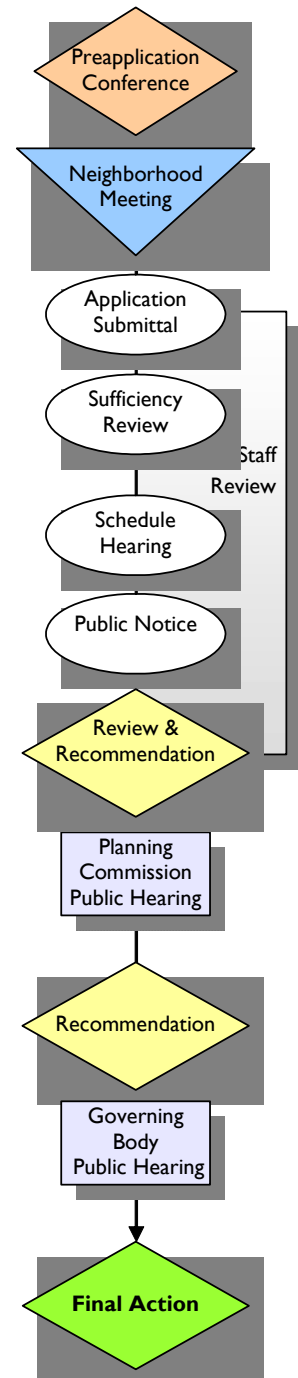
- A. The governing bodies shall consider adoption of or amendments to the Comprehensive Plan, as may be required from time to time.
- B. The governing bodies shall also consider adoption of or amendments to the Comprehensive Plan when zoning map change proposals are in conflict with the Plan, as determined by the Planning Director or designee.
- C. Adoption of or amendments to the Comprehensive Plan shall only apply to the jurisdiction in which the subject property is located unless the property is the subject of an annexation petition, or the amendment is pursuant to paragraph 3.4.10, Evaluation and Assessment Report.

3.4.2 Coordination with Applications for Zoning Map Change

- A. When required to ensure consistency between the Comprehensive Plan and proposed zoning map changes, an application for a plan amendment shall be submitted concurrently with a zoning map change application. The public hearings on both the plan amendment and zoning map change may be heard at the same meeting; however, decisions shall be rendered with separate motions.
- B. A Comprehensive Plan Amendment shall not be required for Initial Zoning Map Changes, as defined in Sec. 16.3, Defined Terms.
- C. **Administrative Withdrawal**
 The Planning Director or designee may withdraw applications for a Comprehensive Plan amendment under the following circumstances:
 1. The applicant has failed to submit required information within 90 days of a request for such information; or
 2. The associated zoning map change is administratively withdrawn pursuant to paragraph 3.5.7C, Administrative Withdrawal.

3.4.3 Pre-Application Conference

- A. Applicants applying for a plan amendment shall schedule a pre-application conference with the Planning Director or designee in accordance with paragraph 3.2.2, Pre-Application Conference.
- B. If a plan amendment application is not submitted within six months of the date of the pre-application conference, a new pre-application conference is required.



3.4.4 Neighborhood Meeting

All applicants applying for a plan amendment shall hold a neighborhood meeting in accordance with paragraph 3.4.4, Neighborhood Meeting, except for changes made pursuant to paragraph 3.4.10, Evaluation and Assessment Report.

3.4.5 Application Requirements

An application for a plan amendment shall be submitted in accordance with paragraph 3.2.4, Application Requirements.

3.4.6 Action by the Planning Commission

- A.** Before making any recommendation on a plan amendment, the Planning Commission shall consider any recommendations from the Planning Director or designee, and shall conduct a public hearing.
- B.** Notice and public hearing requirements shall be in accordance with paragraph 3.2.5, Notice and Public Hearings.
- C.** It is expected that the applicant or a representative of the applicant will appear at the meetings to explain why the Comprehensive Plan should be changed.
- D.** Following the public hearing, the Planning Commission shall make a recommendation on the application to the governing body.
- E.** The Planning Commission shall make its recommendation within three consecutive regular Commission cycles (approximately 90 days total) of its initial public hearing on the amendment.

3.4.7 Criteria for Future Land Use Map Change Recommendations

The recommendations of the staff and Planning Commission to the governing body shall show that the following criteria were considered regarding a proposed change to the Future Land Use Map of the Durham Comprehensive Plan:

- A.** Whether the proposed change would be consistent with the intent, goals, objectives, policies, guiding principles and programs of any adopted plans;
- B.** Whether the proposed change would be compatible with the existing land use pattern and/or designated future land uses;
- C.** Whether the proposed change would create substantial adverse impacts in the adjacent area or the City or County in general; and
- D.** Whether the subject site is of adequate shape and size to accommodate the proposed change.

3.4.8 Modification of Tier Boundary

Where a zoning map change involves modification of the Tiers established in the Comprehensive Plan, the following criteria shall be considered.

- A. The site is contiguous to the proposed Tier;
- B. The site is not in the drainage basin for Lake Michie or Little River or in the one-mile critical area around Jordan or Falls Reservoirs;
- C. The extension does not violate any agreements with neighboring jurisdictions; and
- D. If the proposal is to expand the Suburban Tier, extending utilities to serve the site is determined to be technically feasible by the Public Works Director or designee and will not result in inordinate cost to the City.

3.4.9 Action by the Governing Body

- A. Before taking action on a plan amendment, the governing body shall consider the recommendations of the Planning Commission and Planning Director, and shall conduct a public hearing.
- B. Notice and public hearing requirements shall be in accordance with paragraph 3.2.5, Notice and Public Hearings.
- C. It is expected that the applicant or a representative of the applicant will appear at the meetings to explain why the plan should be changed.
- D. Following the public hearing, the governing body may approve the amendment, deny the amendment, or send the amendment back to the Planning Commission for additional consideration.
- E. An approval shall be by written resolution. The approval may be contingent upon conditions specified by the governing body. The effective date may be immediate or may be a date otherwise specified in the approval.

3.4.10 Evaluation and Assessment Report

- A. Annually, the Planning staff will prepare an Evaluation and Assessment Report (EAR) for review and approval by the governing bodies. The EAR will include, at a minimum, the following:
 - 1. A rectification of any differences between the adopted Future Land Use Map of the City and County;
 - 2. A report on the progress of policies within the Durham Comprehensive Plan;
 - 3. Proposed changes to the policies of the Durham Comprehensive Plan that are primarily technical in nature, if any;
 - 4. A summary of land use trends and issues that developed over the previous year; and
 - 5. Technical updates to the Future Land Use Map;
 - a. Amendments to the Recreation and Open Space layer, if needed, to conform to the most recent Special Flood Hazard Area designation by the Federal Emergency Management Agency;
 - b. Amendments to the Recreation and Open Space layer to include those properties for which a conservation easement has been recorded with the Register of Deeds; and
 - c. Amendments to the Agricultural layer to include those properties for which an agricultural easement has been recorded with the Register of Deeds.

- B.** The governing bodies shall hold public hearings for the approval of the EAR. Notification of the public hearings shall be pursuant to paragraph 3.2.5, Notice and Public Hearings.

Sec. 3.5 Zoning Map Change

3.5.1 Description

A. Purpose

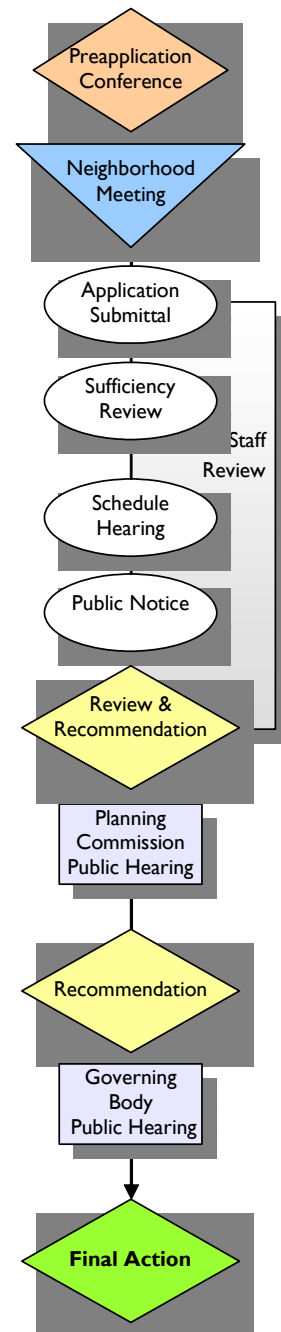
The purpose of a zoning map is to amend the zoning district boundaries of the Official Zoning Map.

B. Initiation

A zoning map change may be initiated by the governing body, the Planning Commission, the Board of Adjustment, the Planning Director or designee, a citizen or the property owner or their agent, except that a petition for a zoning map change with a development plan may only be initiated by the property owner or their agent.

C. Development Plans

A development plan provides additional information with a zoning map change petition. The purposes of the development plan are set forth in paragraph 3.5.6, Development Plan. The development plan establishes the level of development that will be allowed on the property. Subsequent site plans or plats shall not deviate from the plan, unless otherwise allowed, or required under this Ordinance. Deviation may require a zoning map change, as established in paragraph 3.5.12, Deviations from Approved Development Plans. Unless a development plan also functions as a site plan, it is not a site specific development plan. The right to develop pursuant to a development plan, whether approved under this Ordinance or any previous ordinance, accrues only for any portion of the plan for which a site plan or preliminary plat is approved, and then only for the period of validity specified in this Ordinance, or where a vested right is established pursuant to Sec. 3.20, Statutory Vested Rights Determination.



D. Mandatory Development Plans

The development plan may be used by the petitioner in any zoning district; however, the development plan shall be required in the PDR, CC, MU, and IP districts and in the RS-M district if the applicant proposes to develop a building greater than 35 feet in height or proposes a density greater than eight units per acre. A development plan shall be required for additions to the UC District after the initial zoning map change *establishing the District on each campus. Development plans may also be required as otherwise set forth in this*

Ordinance. The development plan shall become a part of the zoning map change petition and shall be reviewed concurrently with the zoning map change petition.

E. Traffic Impact Analysis

A traffic impact analysis may be required if the proposed zoning map change meets the threshold requirements established in Sec. 3.3, Traffic Impact Analysis

3.5.2 Pre-Application Conference

- A.** Pursuant to paragraph 3.2.2, Pre-Application Conference, a pre-application conference is required prior to the submittal of a zoning map change application.
- B.** If a zoning map change application is not submitted within six months of the date of the pre-application conference, a new pre-application conference is required.

3.5.3 Neighborhood Meeting

An applicant petitioning for a zoning map change that requires a TIA pursuant to Sec. 3.3, Traffic Impact Analysis, shall hold a neighborhood meeting as set forth in paragraph 3.2.3, Neighborhood Meeting.

3.5.4 Coordination with the Comprehensive Plan

- A.** All petitions for zoning map change shall be consistent with the Comprehensive Plan. A petition for zoning map change shall not be approved by the governing body when there is a conflict with the Comprehensive Plan, as determined by the Planning Director or designee (see Sec. 3.4, Comprehensive Plan Amendment).
- B.** When required, an application for a plan amendment shall be submitted and reviewed concurrently with an application for zoning map change. The public hearings on both the plan amendment and zoning map change may be heard at the same meeting. The decisions, however, shall be rendered with separate motions.

3.5.5 Application Requirements

- A.** An application for zoning map change shall be submitted in accordance with paragraph 3.2.4, Application Requirements.
- B.** Zoning map changes should correspond with the boundary lines of existing platted lots or tracts. If the boundaries of a zoning map change request stop short of an exterior property line, that portion of the property outside the proposed zoning map change boundary shall be capable of being subdivided and developed in accordance with the existing zoning and other requirements of this Ordinance.
- C.** All zoning requirements shall be met within the boundaries of the area being proposed for change, unless the area being changed is utilizing a development plan and is an addition to an existing area zoned with a development plan. If all of the requirements cannot be met on the site being changed, the zoning map change shall be expanded to include necessary property being used to meet zoning requirements. Projects utilizing a development plan may be expanded without meeting this criteria if, considering the original development plan area, the requirement can be met without violating any committed elements. Projects utilizing this provision shall provide graphics and/or a chart demonstrating how the requirements are met.
- D.** If the boundaries of a zoning map change request in process are modified so as to 1) remove property from the request, and 2) have the effect of separating other adjoining properties

from the boundaries of the modified request, that change shall be considered a substantial change from the original request and shall result in the modified request being considered a new zoning map change request and requiring resubmittal with a new application and applicable fees.

3.5.6 Development Plan

A. Purpose

A development plan is intended to identify commitments that are equal to or greater than Ordinance requirements, including but not limited to:

1. Intensity/density of the proposed development;
2. Sensitive areas and related protection;
3. Any limitations on number, type, or range of uses;
4. Dedications or reservations;
5. Design elements if required or otherwise provided; and
6. Development phasing if required or otherwise provided.

B. Designation/Effect

When a proposed zoning map change includes a development plan, the letter “D” shall follow the proposed zoning district designation. If approved, the letter “D” shall remain as a part of the zoning designation of the property. The elements submitted as part of the development plan, called "commitments", are binding and establish the level of development permitted on the property absent further zoning action except as otherwise allowed or required under this Ordinance. "Commitments" may also be identified as "committed elements" throughout this Ordinance.

C. Authority of Planning Director

The Planning Director is authorized to:

1. Delegate authority under this section to a designee;
2. Determine whether modification of an unapproved development plan or deviation from an approved development plan is significant/substantial or minor, or more or less stringent, if not specified in this section;
3. Interpret commitments;
4. Determine whether a conflict exists between commitments. Any conflict between commitments, including design commitments, shall be resolved in favor of the most stringent;
5. Determine whether an element is a commitment if it is not specified as such in this section; and
6. Determine whether additional staff review time is necessary following addition of commitments at hearings through proffers or illustrative graphic depictions. Such determination may require consultation with other departments.

D. Requirements

A development plan shall comply with all applicable laws and guidelines. Requirements under this section shall consist of the following, which may be supplemented by guidelines of the Planning Department.

1. A development plan shall be signed and sealed by a Professional Engineer, Registered Architect, or Registered Landscape Architect. All graphic depictions shall be accurately scaled, and separate or additional sheets may be required by the Planning Department.
2. A development plan shall include a signed request from each property owner that the development plan be approved. A request from an owner's representative is unacceptable unless a document establishing legal authority to act as representative is included.

3. Existing Information

A development plan shall include an existing conditions survey that depicts conditions at time of plan submittal and is signed and sealed by a licensed Professional Land Surveyor, Engineer, or Landscape Architect. A separate existing conditions sheet may also be included. Such document(s) shall provide at least the following information:

- a. All site location information, including vicinity map, property identification numbers, ownership, metes and bounds, and north arrow;
- b. Acreage of the entire site, approximate acreage of the area within each zoning district or overlay on the site, and approximate acreage of area within floodway, floodway fringe, non-encroachment area, or non-encroachment area fringe on the site;
- c. Existing zoning districts and overlays on the site and all adjoining properties, including properties separated by easements or rights of way;
- d. The owners of all adjoining properties, including properties separated by easements or rights of way;
- e. Existing manmade and natural conditions on the site and within 100 feet of the site on adjoining properties, including properties separated by easements or rights of way. Those existing conditions shall include but are not limited to:
 - (1) Amount and location of impervious surface;
 - (2) Topography including steep slopes;
 - (3) Special Flood Hazard Areas and Future Conditions Flood Hazard Areas;
 - (4) Streams, wetlands, and other water bodies;
 - (5) Plans with building envelopes instead of building footprints: Existing trees on the subject property shown on a generalized tree survey that describes the existing vegetation, indicating the range of species and approximate sizes (dbh) of trees;
 - (6) Sites identified in the Durham County Inventory of Important Natural Areas, Plants and Wildlife (Inventory);
 - (7) Historic sites or structures currently designated in, or eligible for, the National Register of Historic Places;

- (8) Sites identified in the Durham Architectural and Historic Inventory;
- (9) Sites identified in the Durham County Archaeological Inventory and other identified archaeological sites, including cemeteries and burial grounds;
- (10) Other protected areas; and
- (11) Existing utility and access easements and rights of way.

f. Adopted plans, including transportation plans, that apply to the site.

4. Minimum Commitments

A development plan shall depict the following proposed elements, as applicable, in graphic form without side notes. Labels and descriptive information shall be located within the graphic depiction. Such elements shall become commitments:

- a. Zoning districts and overlays on the site;
- b. Intensity/density for each zoning district or overlay (square feet if non-residential, units if residential);
- c. For non-residential or multi-family development, building and parking envelope;
- d. Project boundary buffers, including any located off-site, depicted by border lines and indicating minimum committed width. Illustrative representations of vegetation shall not be used. A buffer reduction may only be requested if the minimum committed width that reflects the possible reduction is depicted. Any such width shall be labeled "width if reduced";
- e. General location of each stream crossing;
- f. General location of access points and connections to existing roads;
- g. Dedications or reservations made for consistency with adopted plans, including transportation plans, or as otherwise required by this Ordinance or other law;
- h. Railroad corridors as required under Sec. 12.6, Railroad Corridors;
- i. Maximum impervious area for the site and for each separately zoned portion of the site, indicated numerically within the overall site depiction and each portion;
- j. Areas committed for preservation, including but not limited to steep slopes; stream buffers; wetland buffers; Inventory sites; historic sites or structures currently designated in, or eligible for, the National Register of Historic Places; sites identified in the Durham Architectural and Historic Inventory; and sites identified in the Durham County Archaeological Inventory and other identified archaeological sites, including cemeteries and burial grounds;
- k. Tree preservation areas, tree replacement areas, and a generalized or specimen tree survey as required under paragraph 8.3.3, Tree Survey;
- l. For a manufactured home park or subdivision in a Planned Development Residential (PDR) district, the information required under paragraph 5.3.2E, Manufactured Home Park or Subdivision, and paragraph 6.11.3, Planned Development Residential (PDR);

- m. For all development in a PDR district, the information required under paragraph 6.11.3, Planned Development Residential (PDR);
- n. For all development in a Commercial Center (CC) district, the information required under paragraph 6.11.5, Commercial Center (CC);
- o. For all development in an Industrial Park (IP) district, the information required under paragraph 6.11.6, Industrial Park (IP); and
- p. For all development in a Mixed Use (MU) district, the information required under paragraph 6.11.7, Mixed Use (MU).

5. Additional Commitments - Graphic

A development plan may depict additional proposed elements, including but not limited to the following, in graphic form without side notes. Labels and descriptive information shall be located within the graphic depiction. Such elements shall become commitments.

- a. Limitations on number, type, or range of uses, if not required under paragraph 3.5.6D.4, Minimum Commitments;
- b. General location of on- or off-site road improvements or pedestrian and bicycle systems;
- c. General location and area of open space, recreation areas, trails and greenways, tree preservation areas, or buffers other than project boundary or stream buffers;
- d. Buffer width or opacity that exceeds ordinance requirements;
- e. Landscaping features such as berms or vegetation types;
- f. Building specifications such as number, location, maximum floor area, or maximum height;
- g. General location and types of stormwater facilities and mechanisms for complying with paragraph 8.5.5, Diffuse Flow Requirements.
- h. Areas where mass grading will not occur; and
- i. For development plan proposals other than Design districts: Building or site design elements.

6. Additional Commitments - Text

A development plan may include additional proposed elements as text in side notes, provided they cannot legibly be included within, or do not reference, the graphic depiction. Such elements shall become commitments and shall be labeled "Text Commitments." Examples include description of off-site transportation infrastructure improvements, technical specifications that exceed ordinance requirements, description of elements not identified graphically, and additional description of elements identified graphically. Such elements shall not repeat ordinance requirements or contradict or diminish graphic elements.

7. SIA and TIA Commitments

A development plan shall include a Stormwater Impact Analysis and a Traffic Impact Analysis, if required, with measures required to address any identified deficiencies. Such measures shall be in text form, and may also be in graphic form as appropriate, and shall become commitments.

8. Design Commitments

Except for development plans proposed for a UC, UC-2, or Design district, the development plan for a project containing nonresidential or multifamily structures shall include design elements indicating how the project will relate to its environment (both built and natural). Such elements may be in graphic or text form as appropriate and shall become commitments. They shall be labeled "Design Commitments" and shall include, at a minimum:

- a. A description of the general architectural styles proposed for use in the buildings. This description shall include information on rooflines, building materials, and any distinctive architectural features; and
- b. A description of how the proposed design will fit into the context area, including information about transitions and relationships to existing developments.

9. Phasing Plans

- a. A phasing plan may be provided with any development plan, but shall be required in the following instances:
 - (1) Projects utilizing the Mixed Use District. The phasing plan shall ensure that residential and non-residential components are constructed to satisfy the intent and requirements of this district; and
 - (2) Development within the Suburban Transit Areas. The phasing plan shall ensure the existence of adequate available infrastructure for each phase and minimum required densities in a transit-supportive form at build-out.
- b. The phasing plan shall be in graphic or table form as appropriate and included in the development plan. It shall identify the sequence and timing of the development phases and include utility improvements, land use categories, and areas in square feet or acres. Phasing plan elements shall become commitments.

10. Uses and Minor/Major Special Use Permits

No minor or major special use permit is required for uses that otherwise need such a permit pursuant to paragraph 5.1.2, Use Table; Sec 5.3, Limited Use Standards; or for standards specified elsewhere within the Ordinance, if:

- a. The use or standard is specified on the approved development plan; and
- b. The location, access, building height, and size, as applicable, for the proposed use or standard is specified on the development plan.

E. Illustrative Graphic Depictions

Graphic depictions other than those listed above shall not be shown at, submitted at, or otherwise used in connection with any public hearing on a zoning map change with development plan unless they depict only area within the scope of the development plan

and are development plan commitments in their entirety. Such graphic depictions shall supersede existing commitments, if conflicts exist, to the extent they are more stringent.

F. Development Plan as Site plan/Preliminary Plat

1. At the request of the applicant, a development plan may also serve as a site plan or preliminary plat. Such plan shall comply with both development plan and site plan or preliminary plat requirements, as applicable, and shall undergo one review process. Such plan shall be deemed approved as both development plan and site plan or preliminary plat, as applicable, following development plan approval by the governing body. Fees shall be adjusted by the Planning Department in such cases.
2. Where a development plan also serves as a site plan or preliminary plat, any associated special use permit requirement shall be waived if the development plan contains commitments as to all use categories; intensity of all uses; location of all uses; building heights and areas; and number and location of parking spaces.

G. Modifications before Approval

1. Modifications to a development plan that are proffered at a hearing before the Planning Commission or governing body shall become additional commitments and shall supersede existing commitments, if conflicts exist, to the extent they are more stringent. Proffers that prove to be illegal or less stringent than existing commitments shall be referred back to the Planning Commission or governing body for an additional hearing.
2. Minor modifications may be made to a development plan after the Planning Commission recommendation and before the governing body hearing. Such modifications become additional commitments and shall supersede existing commitments, if conflicts exist, to the extent they are more stringent.
3. Significant modifications that are made to a development plan after the Planning Commission recommendation and before the governing body hearing shall be referred back to the Planning Commission for an additional hearing as required under paragraph 3.5.9B, Changed Application.

3.5.7 Deferral and Withdrawal of an Application for Zoning Map Change

A. Deferral Requests Approved by the Planning Director

1. Deferrals shall be granted by the Planning Director, or designee, under the following criteria:
 - a. The applicant or an opponent may each seek not more than one deferral for each zoning map change requested. No more than two deferrals (one each from the applicant and an opponent) shall be allowed per proposed zoning map change;
 - b. Each deferral request shall be for a maximum of one month. Any deferral request shall be made in writing, citing reasons for requesting the deferral; and
 - c. If the request for deferral is received by the Planning Director or designee and the reasons for the request are made in writing at least ten days, prior to the first Planning Commission or governing body meeting where the item would otherwise be considered.

2. Any other deferrals which do not meet the above criteria shall be treated as a continuance.
3. If notification of the hearing has already been sent by the time deferral is requested each request shall be accompanied by two sets of mailing labels imprinted with the names and addresses of all previously notified property owners and a fee equivalent to the postage required to re-notify the property owners.
4. The above procedures are not applicable to proposed zoning map changes that have been designated as “expedited” by a governing body.

B. Withdrawal Request by Applicant

1. The applicant petitioning for a zoning map change may withdraw the application provided that a written request stating the reason for the withdrawal is received by the Planning Director, or designee, at least ten days prior to the public hearing.
2. The request shall be accompanied by mailing labels imprinted with the names and addresses of the previously notified property owners and a fee sufficient to cover the postage for renotification of surrounding property owners if the withdrawal occurs after the Planning Commission hearing.
3. The applicant petitioning for a zoning map change with a development plan may withdraw the application at any time prior to the opening of the public hearing before the governing body by withdrawing consent to the development plan being imposed on the applicant’s property.
4. The governing body may vote to allow the applicant to withdraw an application for a zoning map change at any time.

C. Administrative Withdrawal

The Planning Director or designee may withdraw applications due to the failure of the applicant to submit required information within 90 days of a request for such information.

D. Resubmittal of Withdrawn Applications

Except in the case of an application where the applicant withdrew consent to a development plan, no application that was previously withdrawn may be resubmitted until at least 6 months have elapsed since the date of withdrawal. In the case of applications withdrawn as a result of the withdrawal of consent to a development plan after publication of a notice of a public hearing, no new application may be resubmitted until at least 12 months have elapsed since the date of withdrawal. The Planning Director or designee may waive this waiting period if the application has been substantially modified or if there has been a significant change in facts or circumstances since the application was withdrawn.

3.5.8 Action by the Planning Director

- A.** The Planning Director or designee shall prepare a staff report that reviews the zoning map change request in light of any applicable plans and the general requirements of this Ordinance.

The staff report shall consider the entire range of permitted uses in the requested classification regardless of any representations made that the use will be limited, unless a development plan is submitted that restricts the permitted range of uses to specific uses. The staff report shall include an evaluation of the consistency of the requested classification

- with adopted plans and the impact of the requested classification on public infrastructure, as well as any specific requirements of the requested classification.
- B. The Planning Director or designee shall forward completed zoning map change requests and any related materials to the Planning Commission for a hearing and recommendation at the first regularly scheduled meeting following completion of the technical reviews by staff.
 - C. The Planning Director or designee shall forward completed zoning map change requests and any related materials, including the Planning Commission recommendation, to the governing body for a public hearing and decision prior to the first regularly scheduled meeting after the Planning Commission hearing.

3.5.9 Action by the Planning Commission

A. General Procedures

1. Before making any recommendation on a petition for zoning map change, the Planning Commission shall consider any recommendations from the Planning Director and shall conduct a public hearing where interested parties may be heard.
2. Notice and public hearing requirements shall be in accordance with paragraph 3.2.5, Notice and Public Hearings.
3. Except in the case of expedited hearings pursuant to paragraph 3.5.9C, Expedited Hearings, the Commission shall make its recommendation within three consecutive regular Commission cycles (approximately 90 days total) of its initial public hearing. The time period for a recommendation may be altered, as in the case of significant modifications, in which case three additional-consecutive regular cycles shall be granted before the case shall go to the governing body.
4. When a recommendation is not made within the time periods established in this section, the governing body may process the request without a Commission recommendation.
5. A zoning map change proposed as a County case shall not require rehearing by the Planning Commission if the property subject to the proposed change is annexed into the City before the Board of Commissioners has acted on the case and the annexation is within 12 months of the original Planning Commission recommendation on the zoning map change, unless the applicant has made a significant modification to the application.

B. Changed Application

If the applicant makes a significant modification to an application for a zoning map change after the Commission has made its recommendation, the Planning Director shall refer the modified request back to the Commission for an additional public hearing. In such case, the Commission shall make a recommendation to the governing body within 90 days of the public hearing on the modified application. If a recommendation is not made within this time frame, the governing body may hear the application without a recommendation from the Planning Commission.

C. Expedited Hearing

1. If the governing body has set an expedited hearing concerning a request, in accordance with paragraph 3.5.11B, Expedited Hearing, a public hearing before the Planning Commission shall be held at the first available hearing date or prior to the hearing before the governing body.

2. The Commission shall make a recommendation at this hearing based on the Review Criteria in paragraph 3.5.10, Written Recommendation, Review Criteria, below. The Planning Commission shall not continue a request for which an expedited hearing has been set, nor shall any deferrals be granted for such a request.

3.5.10 Written Recommendation, Review Criteria

The Planning Commission shall provide a written recommendation regarding whether each proposed map change is consistent with the comprehensive plan and other applicable adopted plans. The recommendation shall be based on the reasons articulated by Commission members voting in the majority, and the recommendation shall be developed as determined in the Commission's *Rules of Procedure*. In addition to plan consistency, Commissioners may also consider other matters deemed appropriate by the Commission, which may include but are not limited to:

- A. Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood;
- B. Suitability of the subject property for uses permitted by the current versus the proposed district;
- C. Whether the proposed change tends to improve the balance of uses, or meets a specific demand in the City and County; and
- D. The availability of adequate school, road, parks, wastewater treatment, water supply and stormwater drainage facilities for the proposed use.

3.5.11 Action by the Governing Body

A. General Procedures

1. Before taking action on a zoning map change request, the governing body shall consider any recommendations of the Planning Commission, Planning Director or designee, and of staff agencies, and shall conduct a public hearing where interested parties may be heard.
2. Notice and public hearing requirements shall be in accordance with paragraph 3.2.5, Notice and Public Hearings.
3. Continuances may be granted before action on the request.
4. Following the public hearing, the governing body may approve the request, deny the request, or send the request back to the Planning Commission for additional consideration.
5. In adopting or rejecting a zoning map change, the governing body shall adopt a statement describing whether its action is consistent with the Comprehensive Plan, and why the action is reasonable and in the public interest. The governing body may adopt the statement furnished by staff or agencies, including but not limited to the Planning Director or the Planning Commission, or it may formulate its own statement.
6. The map change request approved by the governing body may include changes from the request presented. Changes to a development plan may be made upon the proffer by the applicant of such changes.

7. Approval of a petition gives the applicant the ability to proceed with any additional required approvals.

B. Expedited Hearing

1. The governing body, in situations in which it determines certain standards have been met, may expedite the hearing process on a proposed or prospective zoning map change.
2. The governing body may consider a written request from a potential applicant, or from staff, requesting an expedited hearing process. The request shall identify and support the reasons for such expedited consideration.
3. An expedited hearing shall not be granted when a Comprehensive Plan amendment is required, or when a Traffic Impact Analysis is required.
4. In order to grant the request, the governing body shall find that at least one of the criteria below have been met:
 - a. Deadlines set by the local, State or Federal government for receipt of applications for needed funding, designation or other regulations concerning the property make expedited consideration necessary;
 - b. The prospective zoning map change request results from an emergency beyond the control of the applicant, such as response to a disaster;
 - c. The prospective zoning map change request addresses an urgent matter of public health or safety; or
 - d. There are special circumstances that will have a substantial negative impact on the development which could not have reasonably been anticipated and which make expedited consideration necessary.
5. In no event may the governing body hearing occur less than 30 days after the item was granted expedited status. .

3.5.12 Deviations from Approved Development Plans

A. Significant Deviations

The deviations from an approved development plan listed below are deemed significant and shall require that the entire plan be resubmitted for a zoning map change in accordance with the application requirements of this section, except as specified in paragraphs B, C, and D below. Deviations not listed below do not require a zoning map change unless they are otherwise deemed significant or substantial:

1. Increase by any amount in the number of residential units or approved density of residential projects in the overall project, except through use of the density bonus pursuant to Sec. 6.6, Affordable Housing Bonus;
2. Decrease by more than 20% in total density in residential projects, except in the Downtown Tier or Compact Neighborhood Tier;
3. Decrease by more than 5% in total density in residential projects located within the Downtown Tier or Compact Neighborhood Tier, unless that decrease results from the application of UDO requirements relating to size or design;

4. In a nonresidential or mixed-use development, a cumulative expansion adjacent to a residential district or use that exceeds 5% of total building floor area or 4,000 square feet, whichever is greater, or a cumulative decrease that exceeds 20% of total building floor area if creating or maintaining intensity was important to the zoning map determination;
5. With regard to development plans that were approved before commitments, or committed elements, were required to be identified on development plans, any change to a development plan depiction that exceeds current Ordinance requirements for setbacks, open space, buffer width or planting, recreation areas, tree protection areas, landscaped areas, or limitations on height, unless such depiction is clearly identified as "conceptual" or "illustrative";
6. Elimination or reduction of a dedication of right-of-way, greenway, or other public component;
7. A change in the proposed phasing of the project where phasing plans are required or are commitments;
8. A change in use category (for example, residential to office, office to commercial, commercial to industrial, as described in Article 5, Use Regulations), if limitations on the number, range, or types of uses were proposed with the development plan and the governing body limited its consideration of uses to those uses;
9. A change in the number, location, or configuration of access points to the development; or a change to previously shown public road improvements;
10. A change in the location, square footage, or size of a building adjacent to a residential district or use;
11. A change in the architectural design or architectural guidelines unless explicitly indicated as "conceptual" or "illustrative";
12. If a Traffic Impact Analysis was originally submitted, a change that would increase the total vehicle peak hour trips by 3% or greater. If a Traffic Impact Analysis was not originally submitted, a change that would require a Traffic Impact Analysis;
13. An increase of more than 3% in impervious surface area; and
14. Any change that is otherwise prohibited under this Ordinance.

B. Changes to Portions of Development Plans

Where a deviation is proposed from a portion of a development plan, for example from one phase or zoning district, the Planning Director may consider cumulative deviations and the impact of such portion on the overall development in a significance assessment. If the deviation is deemed significant, the Planning Director shall determine whether it requires a zoning map change to all or only a portion of the development plan.

C. Changes Following Transfers to Residential Owners

Where a deviation is proposed from a development plan and a portion of the development has been transferred to a residential owner, the Planning Director may exclude such residential portion from a significance assessment if it meets all minimum ordinance requirements. If the deviation is deemed significant, the Planning Director shall determine whether it requires a zoning map change to all or part of the development plan.

D. Changes Required by Ordinance or Other Law

Notwithstanding the other requirements of this section and except as stated below, a site plan or preliminary plat shall deviate from an approved development plan to conform to the requirements of a new ordinance or other law adopted after development plan approval, and a zoning map change shall not be required. Exceptions are: 1) where the development plan is vested by the appropriate governing body pursuant to the statutory vested rights procedure; and 2) as authorized under paragraph 1.10.3A, Approved Site Plans, Plats, and Permits and Completed Applications. Under such exceptions, the site plan or preliminary plat may conform to the approved development plan.

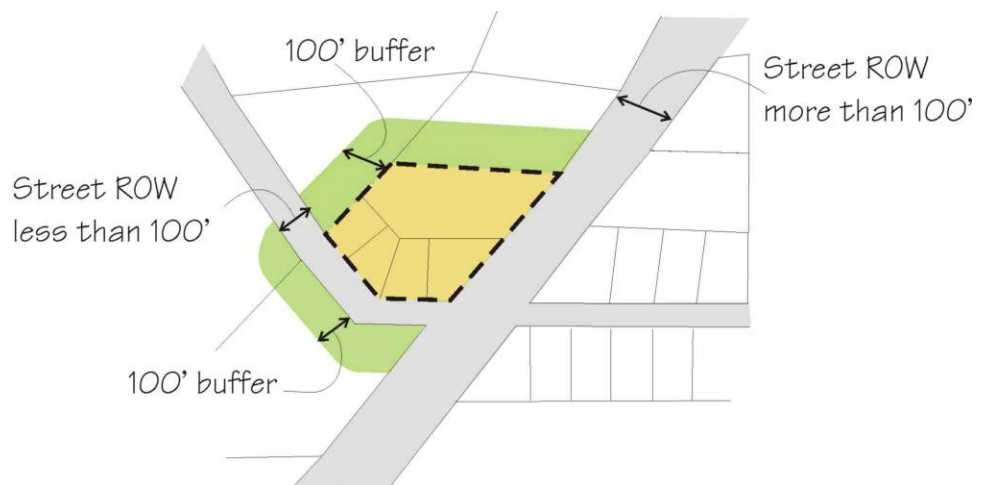
3.5.13 Protest Petition Sufficiency and Procedures

A. Protest Petition Defined

A petition in opposition to a zoning map change shall be considered a "valid protest petition" if the petition meets the requirements of applicable state or local law.

B. Standards

1. The petition must meet the substantive requirements of GS 160A-385(2) or Session Law 2010-80, as appropriate, and in particular must be signed by the owners of either:
 - a. 20% or more of the area included in the proposed change or
 - b. 5% of the area of a 100-foot wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. In evaluating the sufficiency of a protest under this provision:
 - (1) A discrete or separate area shall be calculated for any noncontiguous part of an area proposed for zoning map change that is physically separated from other areas proposed for change by property (not including right of way) that is not part of the requested zoning map change;
 - (2) A street right of way shall not be considered in computing the 100 foot buffer area as long as the street right of way is 100 feet wide or less.
 - (3) When less than an entire parcel of land is being rezoned, the 100 foot buffer shall be measured from the property line of the entire parcel.



2. Property Ownership

Property ownership shall be determined based on available recorded property records. In the event of records that are incomplete or in conflict, County tax listings may be used to determine ownership.

3. Other Required Information

The petition shall contain all information required on the form supplied by the Planning Director or designee or the City Clerk or the Clerk to the Board of Commissioners, as appropriate.

C. Procedure

1. A form for a protest petition shall be available from the Planning Director, or designee, or the City Clerk or the Clerk to the Board of Commissioners, as appropriate.
2. Completed petitions shall be submitted to the appropriate Clerk's office (City Clerk or Clerk to the Board of Commissioners) at least four working days prior to the day of the public hearing.
3. The Planning Director, or designee, in consultation with the Attorney for the jurisdiction shall determine if the petition meets the criteria for classification of "valid protest petition". The Clerk shall inform the governing body that a petition has been filed and indicate the determination by the Planning Director, or designee, whether the petition is valid or invalid. The Planning Director, or designee, shall notify the petitioner as to the validity of the protest petition.
4. Where a substantial modification to a zoning map change application that requires resubmission to the Planning Commission has been submitted, the Planning Director, or designee, shall notify the petitioner, in writing, that a new protest petition is required.
5. Petitions for zoning map change for which a protest petition has been determined to be valid shall require a $\frac{3}{4}$ vote of the governing body for approval rather than a simple majority. Vacant positions and members who have been excused from voting because of a conflict of interest shall not be considered in computing governing body membership.

D. Withdrawal

Persons or entities who have signed protest petitions may withdraw their signatures at any time prior to the vote on the proposed map change. Any withdrawal must meet standards established for such withdrawals by the Planning Department. Withdrawals submitted less than two working days prior to the public hearing may result in a continuance of the hearing if the effect of the withdrawal on the validity of the protest cannot be determined prior to the public hearing.

E. Exemption

The foregoing provisions concerning protest petitions shall not be applicable to any zoning map change that establishes the City's zoning designation on property that has been added to the City's jurisdiction as a result of annexation, except as provided by general or local law.

3.5.14 Coordination with Site Plans

Approval of a zoning map change with a development plan shall enable the owner or an authorized agent of the owner to prepare a site plan in conformance with the zoning map

change and development plan for the property. The site plan may be prepared for the entire property or phases of the development project in accordance with Sec. 3.7, Site Plan Review.

3.5.15 Subsequent Applications

When the governing body has taken action on a zoning map change, no new application may be filed for a similar zoning map change until at least 12 months have elapsed since the date of the previous action. The Planning Director, or designee, may waive this requirement if the application has been significantly modified or there has been a significant change in the facts or circumstances since the previous request.

3.5.16 Development Agreements

Development agreements authorized under NCGS 160A-400.20 *et seq.* and NCGS 153A-379.1 *et seq.* are not authorized by this Ordinance.

Sec. 3.6 Subdivision Review

3.6.1 Applicability

- A.** Subdivision means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and includes all division of land involving the dedication of a new street right-of-way or a change in existing street right-of-way. Subdivision approval shall be required before the division of land (for any purpose) into two or more parcels, except as specified in paragraph 3.6.2, Actions Exempt from Subdivision Requirements.
- B.** All requirements imposed through a plat shall run with the land and shall apply against any owner, subsequent owner, or occupant.

3.6.2 Actions Exempt from Subdivision Requirements

- A.** The following shall not be considered “subdivision” and are exempt from the provisions of this section:
 - 1.** The combination or recombination of lots, or portions of lots, previously created and recorded, if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of this Ordinance;
 - 2.** The division of land into parcels greater than ten acres if no street right-of-way dedication is involved;
 - 3.** The acquisition of strips of land for public easements, including the widening or opening of streets or the location of utility right-of-way; and
 - 4.** The division of a tract in single ownership of which the entire area is no greater than two acres into not more than three lots, if no street right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of this Ordinance.
- B.** No review or approval is required for exempt subdivisions; however, Planning Director, or designee, certification of exempt status is required. Exempt subdivision plats shall be stamped by the Planning Director or designee, noting their exemption, and signed so that they can be recorded by the Office of the Register of Deeds.

3.6.3 No Subdivision without Plat Approval

- A.** No subdivision of land within the jurisdiction of either the City or County may be filed or recorded with the Office of the Register of Deeds until it has been submitted to and approved by the Planning Director or designee, and until the approval is entered on the face of the plat.
- B.** Any person who, being the owner or the agent of the owner of any land located within the jurisdiction of this Ordinance, subdivides land in violation of this Ordinance, or transfers, or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under this Ordinance, and recorded in the Office of the Register of Deeds, shall be guilty of a misdemeanor and shall be punishable, accordingly, by fine or imprisonment.
- C.** The description by metes and bounds in the instrument of transfer, or other document used in the process of selling or transferring land, does not exempt the transaction from penalties.

The City or County, as appropriate, may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order for compliance.

3.6.4 Conservation Subdivision Pre-Application Conference

All applicants considering petitioning for a conservation subdivision shall schedule a pre-application conference with the Planning Director, or designee to discuss the procedures, standards, and regulations required for subdivision approval in accordance with the provisions of this Ordinance.

3.6.5 Sketch/Concept Plans

It is recommended, but not required, that the applicant applying for subdivision approval submit a sketch/concept plan for review by the Planning Director or designee. This plan should, in simple sketch form, show the proposed layout of streets, lots and other features in relation to existing conditions.

3.6.6 Preliminary Plat Requirements

An application for preliminary plat review shall be submitted in accordance with paragraph 3.2.4, Application Requirements. Preliminary plat documents showing the proposed subdivision of the land into lots shall contain, as a minimum, the information listed below unless the Planning Director, or designee, makes the determination that less detailed information is required for adequate review. No processing or review of a preliminary plat will proceed without the required information. Detailed standards and specifications for design and construction are available from City, County and State agencies, as applicable.

A. General Requirements

1. Title Block - Name of project, labeled: Preliminary Plat; submittal and revision dates; sheet size (36" x 48" maximum) with index map and match lines if multiple sheets are required; graphic scale (not smaller than one inch to 200 feet on a standard engineering scale); north point; property identification number; vicinity map clearly establishing the location of the proposed project, with readily recognizable landmarks, stream buffers, flood plain boundaries, property zoning districts and any overlay zones.
2. Name, address and telephone number of owner, applicant and agent; name, address and telephone number of surveyor, engineer, landscape architect, or other designer, with seal.
3. In addition, State or Federal regulations may require that additional information be supplied to the Planning Department as a part of a submittal.

B. Existing Conditions

1. Boundary of the property, using metes and bounds with angle of departure of adjacent properties; site size and amount to be developed; lot lines; building foot prints and square footage; improvements, such as loading areas, parking areas, driveways, alleys, streets, sidewalks, etc.; any septic tanks, drain fields and wells; culverts and other subsurface features; all utility easements, above and below ground, including information on type, size, and elevation; railroads; cemeteries; setback requirements; zoning of the site and adjacent zoning, including any overlay zones; land use of the site and adjacent land uses including major improvements within 50 feet of the subject

property; adjacent property owners; adjacent streets, including name and right of way width. Existing features shall be clearly distinguishable from proposed development.

2. Topographic contours at two foot intervals for all property within 100 feet of a proposed development area and topographic contours at five foot contour intervals for the remainder of the property including a source reference; locations and names of water features including shorelines, water bodies, intermittent and perennial streams; a specimen tree survey; locations of drainage ways, stream buffers, floodways, floodway fringes, wetlands and wetland buffers; locations of vegetation, rock outcrops, steep slope areas, Durham Natural Inventory sites and Durham Historic Inventory Sites.
3. A list of any conditions applied to the property as part of any previous approvals.

C. Proposed Conditions

1. *Street Improvements (Public and Private)*: location of improvements or widenings, names, widths of rights of way and pavement, design criteria including sight triangles and a typical cross section; Traffic Impact Analysis, if required.
2. *Pedestrian Circulation*: location of sidewalks and other pedestrian ways including dimensions and surfacing, along streets and other locations; provision of crosswalks.
3. *Landscaping*: location of all plant materials and other landscaping features, including calculations of amount required and the amount provided; the number, size, and description of plant materials, fences, walls and berms; provisions for screening specialized features, such as storage areas; calculations of the amount of tree coverage required and the amount and percentage of tree coverage provided by tree preservation and tree replacement; calculation of the amount of street trees and the amount provided by tree preservation and tree installation; a land disturbance tree survey; and the location and a description of all proposed and required tree protection measures.
4. *Grading*: location of vegetation to be retained including approximate sizes and protection measures to be used; a depiction of contours at two foot intervals, supplemented with spot elevations when necessary, including location, description, and size of any retaining walls; dimensions of stream buffers.
5. *Utilities*: location and width of all easements and rights of way for water, sewer, storm sewers, gas, electric, communication facilities, or any other utility facility.
6. *Storm Drainage*: location and description of temporary and permanent storm drainage pipes and swales; amount of impervious surface; provisions for erosion and sedimentation controls, including retention and detention facilities; mechanisms for complying with paragraph 8.5.5, Diffuse Flow Requirements; as well as professionally sealed engineering calculations used in the design.
7. *Water and Sewer*: location and description of public and private water and sanitary sewer improvements including connections to existing facilities and maintenance provisions.
8. *Property Dedications/Reservations*: location and description of dedicated or reserved properties under public or private ownership including the boundaries, size, purpose, future ownership and maintenance provisions for the property. This category includes but is not limited to thoroughfares, rail corridors, greenways, recreation facilities, open space and common areas.

9. Specific performance standards as required by other Articles of the UDO.
10. Within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas: demonstration that the subdivision will minimize flood damage through the location and construction of all public utilities and facilities, including water and sewer systems; adequate drainage in accordance with adopted standards to reduce exposure to flood hazards.

D. Traffic Impact Analysis

A traffic impact analysis (TIA) pursuant to Sec. 3.3, Traffic Impact Analysis (TIA) may be required.

3.6.7 Preliminary Plat Approval

A. Applicability

1. A preliminary plat shall be required for all subdivision of land within the jurisdiction of this Ordinance for developments of more than six lots. A preliminary plat is optional for development of six lots or less with no public dedication of land, no streets, no utility extensions, no required diffuse flow mechanisms, and no required stormwater management facilities.
2. Subdivision approval requires the submission of both preliminary and final plats and full interagency review for conformity with the requirements of this Ordinance and other development-related ordinances.
3. Where site plans, as required by this Ordinance, serve as preliminary plats for subdivisions, they shall satisfy these submission requirements in addition to those required for zoning compliance.

B. Public Notice

Any organization or individual that is registered to receive notice pursuant to paragraph 3.2.5D, Registration to Receive Notice, and is located within 1,000 feet of the site under consideration shall receive notice for any preliminary plat application involving criteria for major site plans pursuant to paragraph 3.7.3B, Major Site Plans. Notice shall be provided to each organization or individual in the manner specified in its registration information, which may be first class mail, electronic mail, or other manner offered by the Planning Director.

C. Action by the Planning Director

1. Staff review agencies shall complete review and transmit comments back to the Planning Director or designee.
2. If the applicant fails to submit revised plats in response to the comments of the staff review agencies within 90 days of receiving such comments from the Planning Director, or designee, the Planning Director shall consider the application to have been withdrawn by the applicant. An extension period may be granted by the Planning Director or designee.

D. Action by the Approving Authority

The preliminary plat shall be approved by the approving authority if it meets the following criteria:

1. Conforms with all the provisions and requirements of applicable adopted plans, including but not limited to the Comprehensive Plan, historic preservation plans, open

space plans, greenways plans, transportation plans, gateway plans, corridor plans, collector street plans, and bicycle plans;

2. Conforms with all the provisions and requirements of this Ordinance; and
3. Conforms with all the provisions and requirements of other applicable ordinances not included in this Ordinance.

E. Reservation of Public Facility Sites and Lands

This section does not apply to the reservation of lands for public streets and roads.

1. The review of preliminary plats may be delayed by no more than 45 calendar days if the proposed subdivision contains sites which appear in an adopted plan or policy documents as a future site for a public school or other public facility, recreation area, park, greenway or other open space. During preliminary plat review, the appropriate entity responsible for future site acquisition shall be given 45 calendar days from date of plat submission to decide if it wishes to reserve the site.
2. If the site is not to be reserved, the subdivision shall be processed in the normal fashion. If the agency wishes to reserve the site and specifies such intent in writing to the Planning Director or designee, the subdivision shall not be approved without the reservation.
3. Public school authorities shall have 18 months from the date of preliminary plat approval to acquire the site by purchase, by receipt of dedication, or by initiating condemnation proceedings. If, at the end of the 18-month period, none of the above actions has occurred, the subdivider may consider the land free from reservation and apply for revised preliminary plat approval for its use.

Commentary: See NC General Statutes 153A-331 and 160A-172.

4. Public agencies other than schools shall have 120 calendar days from the date of preliminary plat approval to arrange for site acquisition for public facilities by option to purchase, by purchase, by receipt of dedication, or by initiating condemnation proceedings. If, at the end of the 120-day period, none of the above actions has occurred the subdivider may consider the land free from reservation and apply for revised preliminary plat approval for private use of the property.

F. Issuance of Required Permits

Upon preliminary plat approval, the applicant may apply for the required permits to begin site work and the installation of improvements. All site work shall be performed in compliance with the requirements of this section and other applicable regulations of the city, county, and state. No required permit may be issued until the required preliminary plat is approved.

G. Preliminary Plat Revisions

1. Minor revisions to approved preliminary plats, which reflect the same basic street and lot configuration as used for the original approval, may be approved by the Planning Director or designee.
2. Significant changes to an approved preliminary plat, as determined by the Planning Director or designee, shall be resubmitted for review and approval as if it is a new application.

H. Continuing Validity of Preliminary Plat

1. An approved preliminary plat shall retain its validity for four years, if:
 - a. A permit to begin development pursuant to the plat, such as a land disturbance permit, a building permit, or an improvement permit has been issued and has remained continuously valid thereafter; and,
 - b. Building or land disturbing activity has begun on the property.
2. The issuance of a building permit or a certificate of compliance within a phase of a project shall not extend the validity of the preliminary plat for the unbuilt portions of that phase or any future phases of the project for which building permits have not been issued.
3. Preliminary plat amendments shall not extend the validity of the original approved preliminary plat.

3.6.8 Final Plat Approval

A. Applicability

A final plat shall be required for all subdivision of land within the jurisdiction of this Ordinance except as allowed under North Carolina General Statute.

B. Conformity with Preliminary Plat

The final plat shall conform to the approved preliminary plat, if any, and may constitute only that portion of the preliminary plat which is proposed for recordation.

C. Application Requirements

1. When the installation of required site improvements is nearing completion, the subdivider shall submit a final plat for review and approval.
2. An application for final plat approval shall be submitted in accordance with paragraph 3.2.4, Application Requirements.
3. The final plat shall be drawn in accordance with North Carolina General Statute 47-30, Plats and Subdivisions-Mapping Requirements; standard land surveying and mapping practices; and city/county engineering standards.

D. Endorsements on Final Plats

The following certificates shall be placed upon all final plats:

1. Certificate of accuracy and mapping signed by a registered surveyor;
2. Certificate of ownership and dedication signed and notarized, including all individuals, partnerships, and corporations, and lenders with financial security interests;
3. Attorney's certification of ownership for any final plat involving a right-of-way dedication signed and notarized; and
4. Review officer's certification.

E. Action by the Planning Director

Staff review agencies shall complete review and transmit comments back to the Planning Director, or designee. The Planning Director or designee shall approve the plat as is, defer action for additional information and corrections, or disapprove it. If the final plat is

disapproved or deferred, the Planning Director or designee shall notify the applicant of the reasons for such disapproval or deferral. The final plat shall be approved by the Planning Director or designee if it meets the following criteria:

1. Conforms with all the provisions and requirements of applicable adopted plans, including but not limited to the Comprehensive Plan, historic preservation plans, open space plans, greenways plans, transportation plans, gateway plans, corridor plans, collector plans, and bicycle plans;
2. Conforms with all the provisions and requirements of this Ordinance;
3. Conforms with all the provisions and requirements of other applicable ordinances not included in this ordinance;
4. Conforms with the preliminary plat, if any;
5. Conforms with completed and approved construction drawings for public infrastructure, where such construction drawings are required by this Ordinance or other applicable ordinance; and
6. Is accompanied by a bond or other performance guarantee deemed adequate in amount and form by the requesting department, if required infrastructure, including but not limited to stormwater, street, or water and sewer improvements, has not been completed in accordance with approved construction drawings, and if the department responsible for such infrastructure has consented to final plat approval pending its completion.

F. Issuance of Certificate of Compliance

1. Necessary Infrastructure

- a. If a final plat for a project has been approved prior to completion of stormwater facilities, water and sewer utilities, streets, sidewalks, and recreation facilities, certificates of compliance shall not be issued and permanent water or sewer service shall not be provided for buildings within the platted area until completion of required improvements except as further provided in paragraph b. below.
- b. If the director or designee of the department responsible for acceptance or regulation of the required infrastructure determines in his/her reasonable discretion that delay will improve the quality of the infrastructure or will conserve resources, he/she may allow certificates of compliance to be issued. In such case, the responsible director or designee may require supplementation of the performance guarantee(s) that was provided prior to final plat approval, and shall, in addition, set a date by which the necessary infrastructure shall be completed. Examples of improvement for which delays may be granted include completing stormwater facilities after they are no longer needed as sedimentation basins; delaying final asphalt application on road surfaces for a period of time to detect problems; delaying construction of turn lanes until traffic thresholds are reached; delaying sidewalk segments as individual houses are built; and delaying construction of infrastructure that requires coordination with other planned infrastructure.

2. Other Improvements

For other required improvements, if the responsible department director or designee determines the completion of the improvement prior to issuance of a certificate of compliance is not practicable, and sufficient justification for the delay has been shown, certificates of compliance may be issued if an adequate performance guarantee is provided. In such event, the responsible department director or designee shall determine the time period within which the improvement must be completed.

G. Expiration of Approval

The subdivider shall have 180 days after approval to file and record the final plat with the Office of the Register of Deeds before the approval becomes void.

3.6.9 Alternative Subdivision for Financing Purposes

For purposes of financing or refinancing development, it is sometimes necessary to subdivide a previously approved development complex (including but not limited to a shopping center, an office or industrial park, or a housing complex) originally located on a single parcel into two or more lots, where a subdivision would vary dimensional, parking, or landscaping requirements of this Ordinance. The Planning Director or designee is authorized to permit such subdivision to occur subject to the following criteria:

- A.** A valid, approved site plan exists for the overall complex;
- B.** The complex, in its entirety, satisfies all Ordinance requirements; and
- C.** Each final plat created contains a note stating that the owners acknowledge that the individual parcel is a part of the named development complex, and that deeds of easement, restrictive covenants, and/or other legal documents necessary for the perpetual functioning of the development complex shall be executed and recorded with the final plat.

Sec. 3.7 Site Plan Review

3.7.1 General

Site plan review, when applicable, shall verify that proposed development:

- A.** Complies with all applicable Ordinance requirements, including any applicable development plan;
- B.** Complies with all previously approved applicable plans, including open space and trails plans, and bicycle and pedestrian plans;
- C.** Provides for trash handling, recycling, grease bins, and other waste related facilities employed in the normal operation of the use;
- D.** Provides adequate locations of parking areas, and pedestrian and vehicular access points and circulation;
- E.** Provides adequate design of traffic patterns, traffic control measures, and street pavement areas, with provisions for maintaining traffic flows and reducing unfavorable effects of traffic on nearby properties;
- F.** Provides adequate stormwater facilities, water supply, sanitary sewer service, and fire protection, as evidenced by conformance with department standards, specifications, and guidelines;
- G.** Complies with requirements for easements and dedications;
- H.** Where a TIA has been submitted, accommodation for the traffic generated by the development with the existing or funded transportation system, or adequate traffic mitigation measures, are provided.

3.7.2 Applicability

All proposed development or changes of use, except as indicated below, shall be subject to the site plan review process. The following are exempt from site plan review:

- A.** Single-family and two-family development on existing single lots of record.
- B.** Development that does not require review by any City or County department for conformance with the standards of this Ordinance; or does not require a permit such as but not limited to fences or flagpoles. In instances where these types of development require a certificate of appropriateness (COA) or a special use permit, a site plan will not be required.
- C.** Change of use where no additions to buildings or structures, or exterior land improvements, are proposed and the change of use:
 - 1.** Does not require additional parking or stacking.
 - 2.** Does not require additional landscaping.
 - 3.** Does not require a Traffic Impact Analysis (TIA) or no improvements are required as a result of a TIA analysis.
 - 4.** Only requires Architectural Review per Section 3.23.
- D.** Development projects consisting only of improvements within the right-of-way, except for those located within a design district. In these instances, a separate site plan application can

be filed or site plan review can occur through another technical review by the city or county for that development project.

3.7.3 Types of Site Plans

A. Administrative Site Plans

The approving authority is the Planning Director or designee.

1. Level 1

Criteria:

- a.** Requires only Planning Department review with no change in stormwater management; or
- b.** The improvements consist solely of streetscape alterations.

2. Level 2

Criteria: Requires review by other departments in addition to the Planning Department with no change in stormwater management.

3. Level 3

Criteria: Stormwater management, or a change in stormwater management, is required or proposed.

4. Level 4

Criteria: A TIA is required.

B. Major Site Plans

1. The approving authority is the Governing Body.

2. Criteria:

- a.** The request is for approval pursuant to a standard established in the Ordinance that requires Governing Body approval; or
- b.** Involves the requirement of a major or transportation special use permit; or
- c.** Is located in a Watershed Protection Overlay Critical Area (A), as defined in Sec. 4.11, Watershed Protection Overlay, with impervious surface that exceeds the maximum permitted by the Low Density Option under Sec. 8.7, Watershed Protection Overlay Standards.

C. Site Plan Amendments

- 1. The Planning Director, or designee, is authorized to approve minor changes to the approved site plan, resulting from field conditions or which result in an equivalent or better performance.
- 2. Significant changes to the approved site plan, such as but not limited to a change in access points, relocation of buildings or parking areas, relocation of stormwater facilities, and changes of use that require different development standards, shall be resubmitted for site plan approval as a new site plan application.
- 3. Changes to an approved, valid site plan required as a result of an update to the applicable Flood Insurance Rate Map(s) (FIRM) or other detailed flood data pursuant to paragraph 8.4.2, Applicability, shall be submitted as a site plan amendment.

4. A site plan amendment request shall clearly identify the elements for which approval is sought in both text and graphic form. Only those elements so identified shall be reviewed and considered for approval. If any element of an approved plan is changed but not identified, the amendment request shall be denied in its entirety or, if already approved, the amendment shall be deemed null and void in its entirety.
5. Site plan amendments to plans approved under the 1994 Merged Zoning Ordinance, as amended, shall follow approval procedures of this paragraph 3.7.3C.

3.7.4 Conformance to an Approved Development Plan

A site plan shall conform to an approved development plan except as required under paragraph 3.5.12D, Changes Required by Ordinance or Other Law, or as authorized under paragraph 3.5.12, Deviations from Approved Development Plans, and paragraph 3.5.6C, Authority of the Planning Director.

3.7.5 Site Plan Requirements

- A. An application for site plan review shall be submitted in accordance with paragraph 3.2.4, Application Requirements.
- B. Site plans shall demonstrate compliance with all applicable Ordinance requirements, including any variance obtained pursuant to Sec. 3.14, Variance, and any other applicable development requirements. Site plan documents shall contain the information required within the site plan checklists maintained by the Planning Department unless expressly exempted by another provision of this Ordinance, or unless the Planning Director or designee makes the determination that less detailed information is adequate for review.
- C. No processing or review of a site plan will proceed without the required information.
- D. Site plan applications shall utilize applicable forms maintained by the applicable City, County, or State department or agency.
- E. A site plan shall conform to an approved development plan except as required under paragraph 3.5.12D, Changes Required by Ordinance or Other Law, or as authorized under paragraph 3.5.12, Deviations from Approved Development Plans, and paragraph 3.5.6C, Authority of the Planning Director.
- F. All requirements imposed through a site plan shall run with the land and shall apply against any owner, subsequent owner, or occupant.

3.7.6 Submittal of Corrections

- A. Corrections or modifications for site plans shall be returned to the Planning Director or designee within 90 days from the date comments are officially issued or the site plan application shall be considered withdrawn.
- B. Corrections or modifications for site plans submitted to address a Notice of Violation shall be returned to the Planning Director or designee within 30 days from the date comments are officially issued or the site plan application shall be considered withdrawn.
- C. An extension period may be granted by the Planning Director or designee.

3.7.7 Final Approval

- A. Site plans can be considered for final approval only after all comments have been satisfied as determined by the applicable reviewing department or agency.
- B. Approved plans shall be stamped, signed, and dated by the approving authority or designee.

3.7.8 Issuance of Building Permits

After an approved copy of the site plan is received by the Inspections Director or designee, building permits may be issued for the project. No building permit may be issued until the required site plan is approved.

3.7.9 Inspections of Required Improvements

Inspections of site improvements shall be made by the entity responsible for such improvements as required to certify compliance with approved site plans. No improvements shall be accepted for maintenance by the governing jurisdiction unless and until the requirements regarding public improvements have been met.

3.7.10 Issuance of Certificate of Compliance

Improvements specified in the approved plan shall be made prior to issuance of a certificate of compliance unless an extension of compliance has been prepared and approved in conformance with the requirements of this Ordinance.

3.7.11 Coordination with Major Special Use Permits

Applications for major special use permits may be submitted concurrently with a site plan. However, decisions shall be rendered with a separate motion.

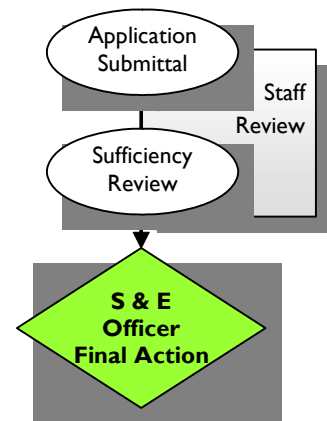
3.7.12 Continuing Validity of Site Plans

- A. An approved site plan shall retain its validity for four years, and shall remain valid if:
 - 1. A permit to begin development pursuant to the site plan, such as a land disturbance permit, a building permit, or an improvement permit, has been issued and has remained continuously valid thereafter; and,
 - 2. Building or land disturbing activity has begun on the property.
- B. The issuance of a building permit or a certificate of compliance within a phase of a project shall not extend the validity of the site plan for the unbuilt portions of that phase or any future phases of the project for which building permits have not been issued.
- C. Requests for extensions of validity for site plans approved under the previous 1994 Merged Zoning Ordinance, as amended, shall comply with the review criteria specified within that ordinance. The approving authority, however, shall be the Planning Director or designee, utilizing the same findings specified in that Ordinance.
- D. Site plan amendments shall not extend the validity of the original, approved site plan.

Sec. 3.8 Sedimentation and Erosion Control

3.8.1 Applicability

- A. If required under Sec. 12.10, Sedimentation and Erosion Control, an approved sedimentation and erosion control plan and/or a land-disturbing permit shall be obtained before commencing land-disturbing activity.



- B. Pursuant to Sec. 113A-57(4) of the North Carolina Sedimentation Pollution Control Act of 1973, land-disturbing activity that requires a sedimentation and erosion control plan under Sec. 12.10, Sedimentation and Erosion Control, shall not commence until at least 30 days after a sedimentation and erosion control plan is filed with the County Sedimentation and Erosion Control Office, regardless of when the plan is approved.

3.8.2 Application Requirements

A. Erosion and Sedimentation Control Plan

1. Three copies of a sedimentation and erosion control plan shall be filed with the County Sedimentation and Erosion Control Office.
2. A sedimentation and erosion control plan shall contain site drawings, vicinity maps, assumptions, calculations, narrative statements, and a construction sequence as needed to adequately describe the proposed development and the measures proposed to comply with the requirements of this Article.
3. A sedimentation and erosion control plan shall be prepared by, and bear the seal and signature of, a registered professional engineer, registered landscape architect, registered architect, registered land surveyor, or certified professional sediment and erosion control specialist. The County Sedimentation and Erosion Control Officer or designee may, however, deem such a seal and signature not necessary due to site simplicity (as the absence of sensitive geographical features and receiving watercourses) and the limited nature of the sedimentation and erosion control measures required.
4. The approval of sedimentation and erosion control plan is conditioned on the applicant's compliance with federal, state and local water quality laws, regulations, and rules.
5. An approved sedimentation and erosion control plan shall be kept on file at the job site.

B. Land-Disturbing Permit

1. A land-disturbing permit may be obtained by submitting the following:
 - a. Applicable fee;

- b.** Zoning compliance checkoff issued by the Durham City-County Planning Department;
 - c.** Completed Durham County Financial Responsibility/Ownership Form With Landowner Consent Form (FRO);
 - d.** Approved sedimentation and erosion control plan, if required;
 - e.** Improvement security, if required;
 - f.** Certification that tree protection fencing has been installed, if required; and
 - g.** Approval of the proposed project by the City or County as applicable.
- 2.** No permit shall be issued until such time as the Sedimentation and Erosion Control Officer or designee is assured that the proposed land-disturbing activity will be carried out in accordance with this section and Sec. 12.10, Sedimentation and Erosion Control, and the approved sedimentation and erosion control plan, if required. A land-disturbing permit application may be disapproved for the same reasons that a sedimentation and erosion control plan may be disapproved, as set forth in paragraph 3.8.7, Disapproval of Plan, of this Ordinance.
- 3.** The Sedimentation and Erosion Control Officer or designee shall require security to assure performance of the conditions of the permit whenever a land-disturbing activity is in excess of five acres or whenever the Officer or designee determines that the activity may result in significant off-site damage. The applicant shall file with the Officer or designee an improvement security in the form of a performance or cash bond or letter of credit. The amount shall be that which the Officer or designee deems sufficient to cover all costs of protection or other improvements required for conformity with standards specified in this section and Sec. 12.10, Sedimentation and Erosion Control. The security may be adjusted or released as the amount of disturbed area changes. The security shall be released when the Officer or designee has certified that all of the requirements of such sections have been met. Forfeiture of the improvement security shall not release the person conducting the land disturbing activity of their obligation to install and maintain necessary erosion control measures, to stabilize the site, or any other obligation of this section or Sec. 12.10, Sedimentation and Erosion Control, or any rule or order promulgated in furtherance thereof.
- 4.** Prior to initiating land-disturbing activity, the permittee shall notify the Sedimentation and Erosion Control Office of the date that such activity will begin.
- 5.** A land-disturbing permit issued shall be prominently displayed at the job site until all construction is completed, all permanent sedimentation and erosion control measures are removed, and the site has been stabilized as required.

3.8.3 Fees

The fees charged for the administration and enforcement of this Article shall be as prescribed by the Board of Commissioners.

3.8.4 Action by Sedimentation and Erosion Control Office

- A. The County Sedimentation and Erosion Control Office shall forward a copy of each complete sedimentation and erosion control plan to the Durham Soil and Water Conservation District for review and comment.
- B. The County Sedimentation and Erosion Control Officer or designee shall review each complete sedimentation and erosion control plan submitted and within 30 days of receipt shall notify the person submitting the plan that it has been approved, approved with modifications, or disapproved. Failure to approve, approve with modifications, or disapprove a complete plan within 30 days of receipt shall be deemed approval. Failure to approve, approve with modifications, or disapprove a revised plan within 15 days of receipt shall be deemed approval. Disapproval of a plan must specifically state in writing the reasons for disapproval.
- C. If, following commencement of a land-disturbing activity pursuant to an approved sedimentation and erosion control plan, the County Sedimentation and Erosion Control Officer or designee determines that the plan is inadequate to meet the requirements of this section or Sec. 12.10, Sedimentation and Erosion Control, the Officer or designee may require such revisions as it deems necessary to comply with such sections. Failure to approve, approve with modifications, or disapprove a revised plan within 15 days of receipt shall be deemed approval. Pending approval of a revised plan, work shall cease or shall continue only as authorized by the Officer or designee.
- D. The County Sedimentation and Erosion Control Officer or designee shall review each permit application that does not require an approved sedimentation and erosion control plan and within 14 calendar days of receipt shall notify the person submitting the application that it has been issued or denied.

3.8.5 Action by Durham Soil and Water Conservation District

The Durham Soil and Water Conservation District shall review a sedimentation and erosion control plan and submit any comments and recommendations to the County Sedimentation and Erosion Control Office within 20 days of receipt, or within any shorter period of time as may be agreed upon by the District and the Office. Failure of the District to submit its comments and recommendations within 20 days or within any agreed-upon shorter period of time shall not delay final action on the plan.

3.8.6 Preconstruction Conference

When deemed necessary by the Sedimentation and Erosion Control Officer, or designee, a preconstruction conference may be required.

3.8.7 Disapproval of Plan

- A. An erosion control plan may be disapproved upon a finding that an applicant, or a parent, subsidiary or other affiliate of the applicant:
 - 1. Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the North Carolina Sedimentation Control Commission or a local government pursuant to the North Carolina Sedimentation Pollution Control Act of 1973, as amended, and all rules and orders adopted pursuant to it (the Act) or local ordinance adopted pursuant to the Act, and has not complied with the notice within the time specified in the notice;

2. Has failed to pay a civil penalty assessed pursuant to the Act or a local ordinance adopted pursuant to the Act by the time the payment is due;
 3. Has been convicted of a misdemeanor pursuant to NCGS § 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the Act; or
 4. Has failed to substantially comply with state rules or local ordinances and regulations adopted pursuant to the Act.
- B. For purposes of this subsection, an applicant's record may be considered for only the two years prior to the application date.
- C. Any person engaged in land-disturbing activity who fails to file a plan in accordance with this Article, or who conducts a land-disturbing activity except in accordance with provisions of an approved plan, shall be deemed in violation of this Article.

3.8.8 Amendment of Plan

Applications for amendment of an erosion control plan in written and/or graphic form may be made at any time under the same conditions as described in this section for a new application. Until such time as such amendment is approved by the Sedimentation and Erosion Control Officer or designee, the land-disturbing activity shall not proceed except in accordance with the erosion control plan as originally approved.

3.8.9 Appeals

- A. Except as provided in paragraph B. of this subsection, the appeal of a disapproval or approval with modifications of a plan shall be governed by the following provisions:
1. The disapproval or modification of any proposed erosion control plan or the refusal to issue a land-disturbing permit by the Sedimentation and Erosion Control Officer or designee shall entitle the person submitting the plan, or applying for the permit, to a hearing if such person submits written demand to the Clerk to the Board of Commissioners for a hearing within 15 days after receipt of written notice of disapproval or modifications. The written demand must specify, with particularity, the factual and/or legal basis for the appeal. No grounds, other than those so specified, may be argued;
 2. Hearings held pursuant to this section shall be conducted by the Board of Commissioners within 15 days after the date of the appeal or request for a hearing, or at the next regularly scheduled meeting, whichever is later; and
 3. If the Board of Commissioners upholds the disapproval or modification of a proposed erosion control plan or refusal to issue a permit following the public hearing, the person submitting the plan or permit application shall then be entitled to appeal the Board of Commissioners' decision to the State Sedimentation Control Commission as provided in NCGS § 113A-61(c) and Title 15 NCAC 4B.0018(d).
- B. In the event that an erosion control plan is disapproved pursuant to paragraph 3.8.7, Disapproval of Plan, the County Sedimentation and Erosion Control Office shall notify the Director of the Division of Land Resources (within the North Carolina Department of Environment and Natural Resources [DENR]) of such disapproval within ten days. The Office shall advise the applicant and the Director in writing as to the specific reasons that the plan was disapproved. The applicant may appeal the Office's disapproval of the plan pursuant to paragraph 3.8.7, Disapproval of Plan, directly to the State Sedimentation Control Commission.

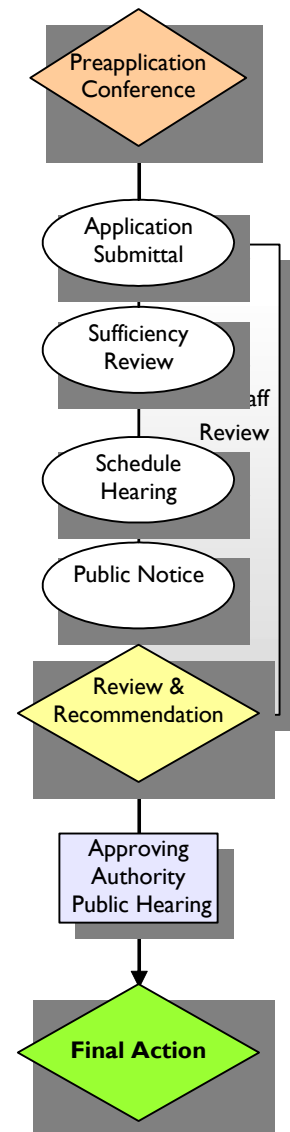
3.8.10 Expiration

- A.** A land-disturbing permit shall expire at the end of:
 - 1.** One year from the date of issuance if no land-disturbing activity has been undertaken in that period. No land-disturbing activity may take place following expiration until the person responsible has applied for, and received, a new land-disturbing permit. The fee for the new permit shall be 100% of the current applicable fee; or
 - 2.** A two-year period, unless it is extended by the Sedimentation and Erosion Control Officer or designee upon written request of the permit holder. The request for extension shall include reasons for incompleteness of the work. After review of the original plan and an on-site inspection of the completed work, the permit may be extended effective for a period not to exceed six months from the date of expiration of the original permit. The fee for the extended permit shall be 25% of the current applicable fee. If work cannot be completed and the site permanently stabilized prior to expiration of the permit extension, then a new land-disturbing permit must be applied for and obtained as described in this section.
- B.** An approved sedimentation and erosion control plan for which no permit has been issued shall expire one year from the approval date. If a plan has been disapproved, a revised plan must be submitted within one year from the disapproval date or the file will be closed.

Sec. 3.9 Special Use Permit

3.9.1 Applicability

- A. Special uses within the zoning districts are considered to be uses which are appropriate in a particular zoning district but because of their potential for incompatibility with surrounding uses require individual review.
- B. A minor special use permit shall be required for all minor special uses as set forth in the use table in Sec. 5.1, Use Table, and as may be specified elsewhere in this Ordinance. Minor special use permits require approval by the Board of Adjustment, except pursuant to paragraph 3.9.1F, below.
- C. A design special use permit shall be required for development projects with corresponding site plans and architectural reviews where alternative forms of compliance are sought under Sec. 6.12, Design Districts. Design special use permits require approval by the Board of Adjustment, except pursuant to paragraph 3.9.1F, below.
- D. A major special use permit shall be required for all major special uses as set forth in the use table in Sec. 5.1, Use Table; for spray irrigation in a conservation subdivision pursuant to paragraph 6.2.4, Conservation Subdivision; and as specified elsewhere in this Ordinance. Major special use permits require approval by the appropriate governing body.
- E. A transportation special use permit shall be required for development projects with corresponding site plans and preliminary plats pursuant to paragraph 3.9.10, Transportation Special Use Permit. Transportation special use permits require approval by the appropriate governing body.
- F. Projects that require not only a major and/or transportation special use permit, but also a minor and/or design special use permit may have the use permits consolidated into a single hearing before the appropriate governing body so long as all required findings for each special use permit are made. Separate orders for each special use permit shall be issued.



3.9.2 Pre-Application Conference

All applicants applying for a special use permit shall schedule a pre-application conference in accordance with paragraph 3.2.2, Pre-Application Conference.

3.9.3 Application Requirements

All applications for special use permits shall be submitted in accordance with paragraph 3.2.4, Application Requirements.

3.9.4 Notice and Public Hearings

Once the application has been determined complete, the Planning Director or designee shall schedule a public hearing and give public notice as set forth in paragraph 3.2.5, Notice and Public Hearings.

3.9.5 Action by the Planning Director

The Planning Director or designee shall prepare a report that reviews the special use permit in light of any requirements of this Ordinance. A copy shall be provided to the Board of Adjustment or the governing body, as appropriate, and the applicant.

3.9.6 Approval of a Minor or Design Special Use Permit

- A. Prior to scheduling the public hearing on the minor or design special use permit, the corresponding site plan or architectural review application, as applicable, shall be ready for action by the approving authority.
- B. The applicant seeking the special use permit shall have the burden of presenting evidence sufficient to allow the approving authority to reach the conclusions set forth below, as well as the burden of persuasion on those issues.
- C. After conducting the public hearing and hearing the recommendations of the Planning Director or designee, the Board of Adjustment shall:
 - 1. Approve the request;
 - 2. Approve the request with conditions.
 - 3. Deny the request; or
 - 4. Continue the hearing.
- D. Conditions may be incorporated as part of the approval of the special use permit to assure that adequate mitigation measures are associated with the use or design. The conditions shall become a part of the minor or design special use permit approval. Violations of any of the conditions shall be treated in the same manner as other violations of this Ordinance.

3.9.7 Approval of a Major or Transportation Special Use Permit

- A. Prior to scheduling the public hearing on the major or transportation special use permit, the corresponding site plan shall be ready for action by the approving authority.
- B. After conducting the public hearing and hearing the recommendations of the Planning Director, Transportation Director, or their designee as appropriate, the governing body shall:
 - 1. Approve the request;
 - 2. Approve the request with conditions.
 - 3. Deny the request; or
 - 4. Continue the hearing.
- C. The governing body may place conditions on the use as part of the approval to assure that adequate mitigation measures are associated with the use. The conditions shall become a

part of the major special use permit approval. Violations of any of the conditions shall be treated in the same manner as other violations of this Ordinance.

3.9.8 Criteria for Approval of Major or Minor Special Use Permits

A. General Findings

Unless otherwise specified in this Ordinance, applications for major or minor special use permits shall be approved only if the approving authority finds that the use as proposed, or the use as proposed with conditions, is:

1. In harmony with the area and not substantially injurious to the value of properties in the general vicinity;
2. In conformance with all special requirements applicable to the use;
3. Will not adversely affect the health or safety of the public; and
4. Will adequately address the review factors identified below.

B. Review Factors

The applicant shall demonstrate that the review factors listed below have been adequately addressed. If an application is denied, the approving authority shall specify which of these review factors, if any, were not adequately addressed.

1. Circulation

Number and location of access points to the property and the proposed structures and uses, with particular reference to automotive, bicycle, mass transit and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.

2. Parking and Loading

Location of off-street parking and loading areas.

3. Service Entrances and Areas

Locations of refuse and service areas with particular reference to ingress and egress of service vehicles.

4. Lighting

Locations of exterior lighting with reference to glare, traffic safety, economic effect and compatibility with other property in the area.

5. Signs

Appropriateness of signs considering location, color, height, size, and design within the context of other property in the area.

6. Utilities

Location and availability of utilities.

7. Open Spaces

Location of required yards and other open spaces and preservation of existing trees and other natural features.

8. Environmental Protection

Preservation of tree cover, Durham Inventory Sites, floodplain, stream buffers, wetlands, steep slopes, open space and other natural features, and protection of water quality.

9. Screening, Buffering and Landscaping

Installation of screening, buffering, fencing and landscaping where necessary to protect adjacent property.

10. Effect on Nearby Properties

Effects of the proposed use on nearby properties, including, but not limited to, the effects of noise, odor, lighting, and traffic.

11. Compatibility

The level of general compatibility with nearby properties and impacted neighborhoods, including but not limited to the appropriateness of the scale, design, and use in relationship to other properties.

12. Consistency with Policy

Consistency with the Comprehensive Plan and applicable development tier guidelines, overlay purposes, and zoning district intent statements in Article 4, Zoning Districts.

13. Other Factors

Any other review factors which the approving authority considers to be appropriate to the property in question.

C. Additional Review Factors for Development in Special Flood Hazard Areas and Future Conditions Flood Hazard Areas

The applicant for a minor special use permit under this section shall demonstrate that the additional review factors listed below have been adequately addressed. If the application is denied, the Board of Adjustment shall specify which of these review factors, if any, were not adequately addressed.

1. Susceptibility of the proposed facility, structure, or other development and its contents to flood damage and the effect of such damage on the individual property owner and others as a result of flood damage;
2. Importance of the services provided by the proposed facility, structure, or other development to the community;
3. Necessity to the facility, structure, or other development of a waterfront location, where applicable;
4. Compatibility of the proposed use with existing and anticipated development;
5. Safety of access to the property in times of flood for ordinary and emergency vehicles;
6. Expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;
7. Costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges;

8. Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
9. The proposed fill or development provides for a better balance between overall efficiency of the site design and improved conservation elsewhere on the site than would be possible without intrusion into the floodway fringe, nonencroachment area fringe, or Areas of Shallow Flooding (Zone AO);
10. The proposed fill or development represents the minimum amount of floodway fringe, non-encroachment area fringe, or Areas of Shallow Flooding (Zone AO) intrusion to achieve this better balance; and
11. Any other relevant factors, technical evaluations, or standards specified in other sections of this Ordinance.

3.9.9 Criteria for Approval of Design Special Use Permits

Applications for a design special use permit shall be approved only if the approving authority finds that the alternative design as proposed, or the design as proposed with conditions, shall yield an equal or better performance as compared to standard Ordinance requirements based upon the following design factors, as applicable:

- A. Street level activity is generated with pedestrian oriented design on all street frontages;
- B. The design complements the surrounding context;
- C. The design relates to the human scale in site and building design;
- D. The design incorporates sustainable design strategies that equal or exceed current requirements;
- E. The design protects and emphasizes important views of notable buildings and sites; and
- F. Access and circulation systems allow a wide range of efficient multi-modal movement options.

3.9.10 Transportation Special Use Permit

A. Requirements

A transportation special use permit shall be required for development projects that are expected to generate:

1. 600 or more vehicle trips at peak hour; or
2. 300 or more vehicle trips at peak hour, if any road serving the project is operating at a level of service lower than the jurisdiction's adopted level of service.

B. Exemptions

The following projects shall be exempt from the requirement of a transportation special use permit, even if they meet or exceed the thresholds specified above.

1. Projects that do not require a TIA per Sec. 3.3, Traffic Impact Analysis (TIA).
2. Projects within the UC, UC-2, or SRP zoning districts.
3. Projects within the Downtown Tier.

4. Projects which have submitted a TIA in connection with a zoning map change with a development plan, and which are developing consistent with the approved development plan, if the TIA is valid pursuant to paragraph 3.3.6, Period of Validity.
5. (County Only) Projects within the SRP-C District.

C. Criteria for Approval

Applications for a transportation special use permit shall be approved only if the governing body makes the following findings:

1. The traffic generated by the development and associated improvements to the street system will not have a significant adverse impact on the surrounding area. Significant adverse impact shall include:
 - a. Substantial increases in traffic on local residential streets such that the majority of the traffic is not associated with the residential properties which front on the street; or
 - b. The need to widen local residential streets, which would detract significantly from the character or basic function of the nearby streets.
2. Adequate provisions have been made for safe and efficient vehicular circulation, parking and loading, and pedestrian access.
3. The traffic generated by the proposed development and any proposed improvements to the street system will not have a significant adverse impact on the environment. Significant adverse impacts shall include but not be limited to undue concentration of air pollutants, or excessive noise or vibrations.
4. The traffic generated by the development can be accommodated by the existing or funded transportation system, or adequate traffic mitigation measures have been proposed as part of the development application. Proposed mitigation measures shall become conditions of the special use permit. The adopted level of service for the adjacent roadways may be considered in making this determination but shall not be the sole factor considered by the governing body.

3.9.11 Coordination with Variances

Applications for variances may be submitted concurrently with requests for special use permits. However, decisions shall be rendered separately for any variance and the special use permit(s).

3.9.12 Coordination with Zoning Map Change Applications

An application for a special use permit may be reviewed concurrently with a zoning map change application. However, decisions shall be rendered with separate motions.

3.9.13 Resubmittals

An application for a special use permit which has been denied may be resubmitted if there has been a change in circumstances, as determined by the Planning Director or designee.

3.9.14 Amendments

Alterations or revisions to approved special uses may be approved by the Planning Director or designee if the special use still meets the intent of the standards established with the

original approval. Significant modifications to approved special uses, as determined by the Planning Director or designee, shall require submittal of a new application.

3.9.15 Expiration

A special use permit shall become null and void in any of the following cases:

- A.** If a site plan or architectural review, as applicable, is not approved within 12 months of the date of permit approval.
- B.** If an approved site plan, architectural review application, or building permit expires.
- C.** If a building permit is not issued within two years of the date of approval, in cases where a corresponding site plan or architectural review is not required.
- D.** If a substantial violation of the conditions of the permit, as determined by the Planning Director or designee occurs. The addition of language to the special use permit regarding such voiding shall not be required.

3.9.16 Appeal

Appeal from final action can be taken by filing a petition for *certiorari* with the Durham County Superior Court.

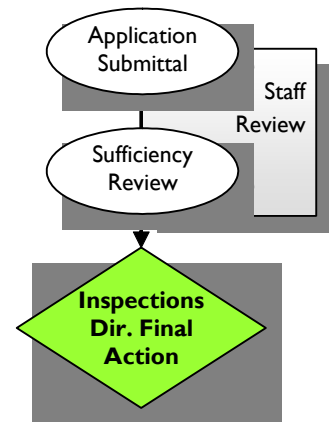
Sec. 3.10 Sign Permit

3.10.1 Applicability

- A. Certain signs shall be allowed without sign permits (as set forth in Article 11, Signs). Signs requiring permits shall be allowed in accordance with the following procedures.

Commentary: A common signage plan may be required before a sign permit can be issued (see Sec. 3.11, Common and Way-Finding Signage Plans).

- B. Internally oriented signs not legible from the public right-of-way shall not require a sign permit; however, electrical or other permits may be required.



3.10.2 Application Requirements

- A. Except as provided in Article 11, Signs, no sign may be erected, moved, enlarged, or altered except in accordance with this Ordinance and pursuant to the issuance of a sign permit.
- B. A sign permit application shall be submitted in accordance with paragraph 3.2.4, Application Requirements.

3.10.3 Action by the Inspections Director

Upon review of the application, the Inspections Director or designee shall approve the sign permit provided the sign meets all requirements of this Ordinance, and all other applicable electrical and North Carolina Building Code requirements.

3.10.4 Inspection of Permanent Signs

- A. The applicant shall request an inspection by the appropriate inspector after installation of the signs.
- B. If the signs are found to be in compliance, the applicant shall receive a permanent seal which identifies the sign. The applicant shall attach the identification in a conspicuous location which is accessible to the Inspections Director or designee. It is recommended that businesses place the permit in a lower corner of the front door of the business in those cases where the seal is not affixed to the sign.
- C. The sign permit shall be null and void if sign installation is not completed within six months or the signs are not in conformance with the approved application.
- D. Valid sign permits may be assigned to a successor as holder of a business license for the same premises.

3.10.5 Temporary Sign Permits

A temporary sign permit shall be issued in accordance with Article 11, Signs. A common signage plan pursuant to Sec. 3.11, Common and Way-Finding Signage Plans, shall not be required for applications for temporary sign permits.

3.10.6 Revocation of a Sign Permit

The sign permit shall be revoked if a sign is found to be in violation of the requirements of this Ordinance, or other applicable electrical and North Carolina State Building Code requirements.

3.10.7 Appeal

Final action on a sign permit can be appealed in accordance with Sec. 3.15, Appeal of Administrative Decision.

Sec. 3.11 Common and Way-Finding Signage Plans

3.11.1 General

- A.** A common signage plan is required for all signs for one or more buildings or businesses within a unified development complex, as demonstrated through a development plan or approved site plan(s), even if the property is subdivided and has various owners.
 - 1.** Approval of a common signage plan is required prior to the issuance of a sign permit.
 - 2.** Internally-oriented signs not visible from the public right-of-way shall not be required to be included in a common signage plan.
 - 3.** Applications for temporary sign permits shall not be required to submit an approved common signage plan.
 - 4.** Common signage plans are not required in UC, UC-2, and Design districts and in a local Historic Districts Overlay. (County Only) Common signage plans are not required in the SRP-C District.
- B.** A way-finding signage plan is required to allow signs pursuant to paragraph 11.6.2A.8, Way-Finding Signs.
 - 1.** Approval of a way-finding signage plan is required prior to the issuance of a sign permit.
 - 2.** A way-finding signage plan can be approved separately, or as part of, a common signage plan.
 - 3.** Internally-oriented signs not visible from the public right-of-way shall not be required to be included in a way-finding signage plan.
 - 4.** (County Only) Way-finding signage plans are not required in the SRP-C District.

3.11.2 Application Requirements

- A.** The elements of common and way-finding signage plans shall be in accordance with Sec. 11.8, Elements of Common and Way-Finding Signage Plans.
- B.** Common and way-finding signage plan applications shall be submitted in accordance with paragraph 3.2.4, Application Requirements.
- C.** Additional requirements are listed in Sec. 11.7, Landmark Signs.

3.11.3 Action by the Planning Director

- A.** The Planning Director, or designee, is the approving authority for common and way-finding signage plans.
- B.** The Planning Director, or designee, may allow modifications to the lettering style of a common signage plan to accommodate state and federally registered trademarks (logos) if the Planning Director, or designee, determines that the intent of the common signage plan requirements shall be maintained. In allowing the modifications, the Planning Director, or designee, may limit the logo size.
- C.** Minor alterations in sign locations resulting from unexpected conditions on the site may be approved by the Planning Director, or designee.

3.11.4 Revisions and Amendments

- A.** Revisions or amendments to a common signage plan shall require documentation from all tenants on the property prior to approval. Signs erected after September 1, 1989, and subsequently made nonconforming because of an amendment to a common signage plan shall be brought into compliance with the amended plan within six months of approval of the amended plan.
- B.** Revisions or amendments to way-finding signage plans are allowed by the person or entity responsible for the signage.

3.11.5 Appeal

Final action on a common or way-finding signage plan can be appealed in accordance with Sec. 3.15, Appeal of Administrative Decision.

Sec. 3.12 Temporary Use Permit

Commentary: Temporary outdoor uses should not be confused with permanent outdoor activities (for example, a car sales lot) that are only allowed in certain districts and require site plan approval, nor should they be confused with an outdoor display area (for example, a garden center that is part of a building supply store) that may be a part of a retail store and require site plan approval.

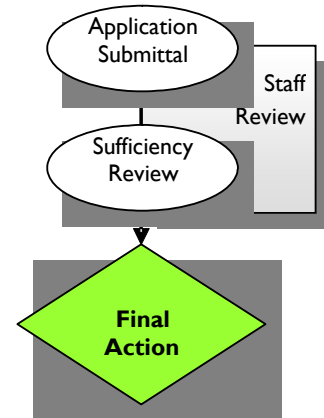
3.12.1 Applicability

- A. Temporary uses occurring on property outside of the public right-of-way shall be allowed upon the issuance of a temporary use permit, except as set forth in, Sec. 5.5, Temporary Uses.

Commentary: Standards for specific uses are included in Sec. 5.5, Temporary Uses.

- B. The provisions of this section shall not apply to temporary uses occurring within the public right-of-way.

Commentary: For further details on temporary uses occurring within the public right-of-way see the applicable City or County Code.



3.12.2 Application Requirements

A temporary use permit application shall be submitted in accordance with paragraph 3.2.4, Application Requirements.

3.12.3 Action by the Planning Director

- A. After receiving the application, the Planning Director or designee shall have up to 30 days to review the application.
- B. Upon hearing recommendations from all appropriate departments, the Planning Director or designee shall approve the issuance of a temporary use permit subject to the following:
1. No lighting or electrical service shall be provided without an electrical permit;
 2. No temporary use structure shall be erected without a building permit;
 3. No temporary use structure shall block fire lanes or pedestrian or vehicular access;
 4. The site of the temporary use shall be cleared of all debris at the end of the temporary use. All temporary structures shall be cleared from the site within five days after the use is terminated;
 5. Written permission of the property owner for the temporary use shall be provided;
 6. Adequate parking shall be provided, considering both the required parking for other uses and the parking for the proposed temporary use;
 7. Adequate traffic control measures shall be provided;
 8. Adequate provisions for trash disposal and sanitary facilities shall be provided; and

9. When appropriate, adequate provisions for crowd control shall be provided.
- C. Temporary use permits may be renewed one time by the Planning Director or designee, unless other renewal standards are specified in Sec. 5.5, Temporary Uses, or in other provisions of this section.

3.12.4 Revocation of a Temporary Use Permit

A temporary use permit shall be revoked if the Planning Director or designee finds that the terms of the permit have been violated or that there is a hazard to the public health, safety and welfare.

3.12.5 Appeal

Final action on a temporary use permit can be appealed in accordance with Sec. 3.15, Appeal of Administrative Decision.

Sec. 3.13 Home Occupation Permit

3.13.1 Applicability

A home occupation (see paragraph 5.4.4) shall require a permit, as set forth below.

3.13.2 Application Requirements

A home occupation application shall be submitted in accordance with paragraph 3.2.4, Application Requirements.

3.13.3 Action by the Planning Director

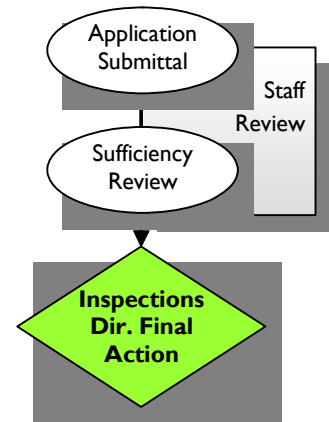
Upon review of the application, the Planning Director, or designee, shall approve the home occupation permit, provided the home occupation meets all requirements of this Ordinance.

3.13.4 Revocation

The home occupation permit shall be revoked if the home occupation is found to be in violation of the requirements of this Ordinance.

3.13.5 Appeal

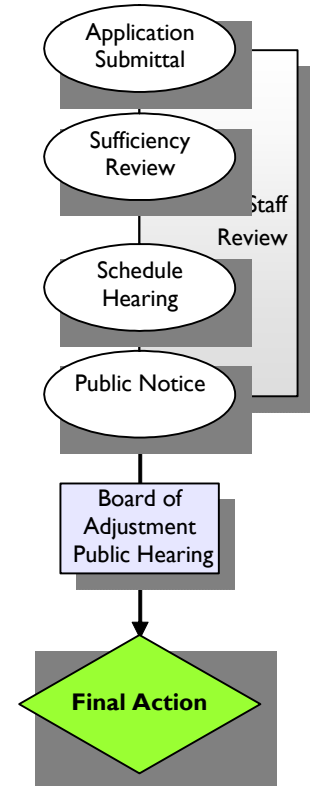
Final action on a home occupation permit can be appealed in accordance with Sec. 3.15, Appeal of Administrative Decision.



Sec. 3.14 Variance

3.14.1 Applicability

- A. The Board of Adjustment may vary certain requirements of this Ordinance, in harmony with the general purpose of these regulations, where unnecessary hardships would result from carrying out the strict letter of the Ordinance.
- B. Despite the above and pursuant to 15A NCAC 02B .0233 and 15A NCAC 02B .0267, a “major variance” from the requirements of Sec. 8.5, Riparian Buffer Protection Standards, including where incorporated by reference, shall be granted only by the North Carolina Environmental Management Commission. A “minor variance” may be granted by the approval authority in accordance with paragraph 8.5.13, Variances.
- C. No variance shall be granted that would have the effect of allowing a use not permitted in the use table in Sec. 5.1, Use Table, or by Sec. 8.4, Floodplain and Flood Damage Protection Standards.



Commentary: Variances may be granted for, among other things, height, structure size, lot dimensions, and setbacks.

3.14.2 Pre-Application Conference

All applicants seeking a variance shall schedule a pre-application conference with the Planning Director or designee to discuss the procedures, standards, and regulations required for variance approval in accordance to the provisions of this Ordinance.

3.14.3 Application Requirements

An application for a variance shall be submitted in accordance with paragraph 3.2.4, Application Requirements.

3.14.4 Notice and Public Hearings

Once the application has been determined complete, the Planning Director or designee shall schedule a public hearing and give public notice as forth in paragraph 3.2.5, Notice and Public Hearings.

3.14.5 Burden of Proof

The applicant seeking the variance shall have the burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth below, as well as the burden of persuasion on those issues.

3.14.6 Action by the Planning Director

The Planning Director, or designee, shall provide the Board of Adjustment with a copy of the application and all relevant materials pertaining to the request prior to the public hearing.

3.14.7 Action by the Board of Adjustment

- A.** Each decision shall be accompanied by a finding of fact by the Board of Adjustment which specifies the reasons for the decision.
- B.** The Board of Adjustment may approve the request, deny the request, or continue the request. In approving the variance, the Board of Adjustment may prescribe reasonable and appropriate conditions provided that the conditions are reasonably related to the variance.

3.14.8 Findings

In granting any variance, the Board of Adjustment shall make the following findings:

- A.** Unnecessary hardship would result from the strict application of the Ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- B.** The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- C.** The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify granting a variance shall not be regarded as a self-created hardship.
- D.** The requested variance is consistent with the spirit, purpose, and intent of the Ordinance, such that public safety is secured, and substantial justice is achieved.

3.14.9 Watershed Protection

- A.** A request for a variance from any requirement of Sec. 8.7, Watershed Protection Overlay Standards, that violates any provision in Title 15 NCAC 2B, Sections .0100, .0200, and .0300, as amended, shall be first heard by the Board of Adjustment in accordance with this section and after notification of the appropriate governing body, except that a request for a variance from the requirements of Sec. 8.5, Riparian Buffer Protection Standards, as referenced by paragraph 8.7.2E, Riparian Buffers, shall proceed under paragraph 8.5.13, Variances. A recommendation from the Board of Adjustment for a variance shall constitute a request by the local government for a variance from the North Carolina Environmental Management Commission. Such variances shall be considered “major variances” in accordance with Title 15A NCAC .0104(r).
- B.** For all variance requests from Sec. 8.7, Watershed Protection Overlay Standards, except those from Sec. 8.5, Riparian Buffer Protection Standards, as referenced therein, the local government with jurisdiction shall notify and allow reasonable comment period for all local

governments having jurisdiction within the watershed area of the water supply source and the entity using the water supply for consumption.

- C. The Planning Director, or designee, shall keep a record of variances to Sec. 8.7, Watershed Protection Overlay Standards. This record of variances, not including those from Sec. 8.5, Riparian Buffer Protection Standards, as referenced in Sec. 8.7, shall be submitted to the Division of Water Quality, North Carolina Department of Environment and Natural Resources by January 1st of each year. The record shall provide a description of each project receiving a variance and the reasons for granting a variance. The record of variances from Sec. 8.5 shall be included in the annual report to the North Carolina Division of Water Quality summarizing activities implementing the requirements of that section.

3.14.10 Expiration

A variance shall become null and void in any of the following cases:

- A. If a site plan, preliminary plat, or architectural review is not approved within 12 months of the date of approval of the variance.
- B. If an approved site plan, preliminary plat, architectural review, or building permit expires.
- C. In cases when a site plan, preliminary plat, or architectural review is not required:
 - 1. If a building permit is not issued within two years of the date of approval.
 - 2. If the Ordinance standard subject to the variance has been amended prior to the issuance of a building permit.
- D. If a substantial violation of the conditions of the variance approval is determined by the Planning Director or designee.

3.14.11 Appeal

Appeal from final action by the Board of Adjustment on a variance can be taken by filing a petition for *certiorari* with the Durham County Superior Court.

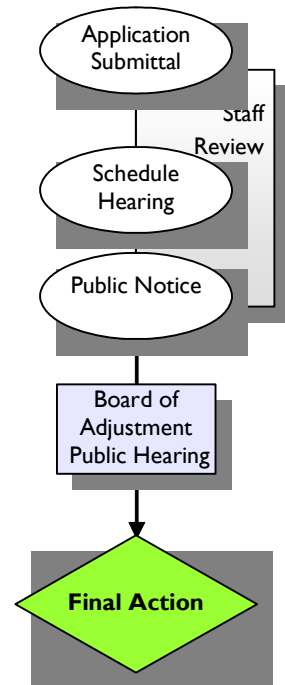
Sec. 3.15 Appeal of Administrative Decision

3.15.1 Applicability

An appeal by any person aggrieved by a final order, interpretation, or decision of any administrative official authorized to make decisions in regard to the provisions of this Ordinance may be taken to the Board of Adjustment, except as otherwise provided in this Ordinance.

3.15.2 Application Requirements

- A. An appeal of an administrative decision shall be taken by filing a written notice of appeal specifying the grounds for the appeal with the City or County Clerk, as applicable.
- B. An application for an appeal of an administrative decision shall be filed in accordance with the applicable provisions of paragraph 3.2.4, Application Requirements.
- C. A notice of appeal of an administrative decision shall be considered filed when a complete application is delivered to the City or County Clerk, as applicable. The date and time of filing shall be entered on the notice.



3.15.3 Submission of Application

- A. A person or party with standing shall have 30 days from receipt of the written decision to file an appeal, or 30 days from receipt from any source of actual or constructive notice of the decision, pursuant to NCGS § 160A-388(b1) or NCGS § 153A-345.1, as applicable.
- B. The official who made the decision shall provide it in writing to the owner of the property that is the subject of the decision and to the party who sought the decision, if different than the owner. The written decision shall be delivered by personal delivery, electronic mail, or by first class mail.

3.15.4 Notice and Public Hearings

Once the application has been submitted, the Planning Director or designee shall schedule a public hearing at the first available Board of Adjustment meeting and give public notice pursuant to paragraph 3.2.5, Notice and Public Hearings.

3.15.5 Action by the Planning Director

- A. The Planning Director or designee shall transmit to the Board of Adjustment all the documents and exhibits constituting the record upon which the action appealed from is taken.
- B. The Planning Director or designee shall provide a copy of the record to the appellant and to the owner of the property that is subject to the appeal, if different than the appellant.

3.15.6 Action by Board of Adjustment

- A. The Board of Adjustment may reverse or affirm (wholly or partly) or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought

to be made in the case before it. To this end, the Board of Adjustment shall have all the powers of the official from whom the appeal is taken.

- B. When hearing an appeal pursuant to a quasi-judicial decision of the Historic Preservation Commission or any other appeal in the nature of *certiorari*, the hearing shall be based on the record below and the scope of review shall be as provided in NCGS § 160A-393(k).

3.15.7 Effect of Appeal

- A. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the Board of Adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property; or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the Ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court.
- B. If enforcement proceedings are not stayed, the appellant may file a request for an expedited hearing of the appeal, and the Board of adjustment shall meet to hear the appeal within 15 days after such a request is filed.
- C. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the Ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the Board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

3.15.8 Appeal

Appeal from the Board of Adjustment action can be taken by filing a petition in the nature of *certiorari* with the Durham County Superior Court.

Sec. 3.16 Historic District or Landmark Designation

3.16.1 Applicability

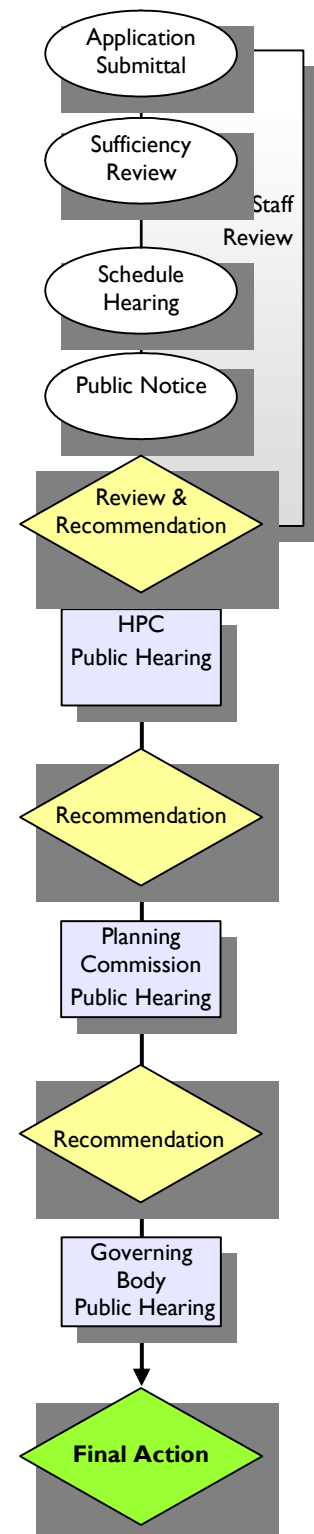
- A. The City Council and the Board of Commissioners may designate, in their respective jurisdictions, an area as an historic district or a property as an historic landmark.
- B. An area may be considered for designation as an historic district only after the HPC deems and finds that an area is of special significance in terms of its prehistorical, historical, architectural or cultural importance, and possesses integrity of design, setting, materials, feeling and association.
- C. A property owner or owners may request that a property be designated as an historic landmark

3.16.2 Initiation of Request

- A. Requests for designating an historic district may be made in any one of the following methods:
 1. By petition to the appropriate governing body of more than 25% of the property owners in the proposed historic district. (The petition shall be filed with the Planning Director or designee).
 2. By initiative of the governing body for proposed historic districts in the governing body's zoning jurisdiction.
- B. An application for an historic landmark designation shall be submitted in accordance with paragraph 3.2.4, Application Requirements. Requests for designation shall include the specific elements of the property for which historic landmark designation is proposed.

3.16.3 Designation of an Historic District

- A. **Initiation of an Historic District Preservation Plan**
 1. Upon the filing of a petition from a property owner or owners or upon the initiative of the City or County, the Planning Director, or designee, shall give notice in accordance with paragraph 3.2.5, Notice and Public Hearings, that a request has been filed and shall be considered by the HPC at a specified date and time.
 2. The HPC shall conduct a preliminary consideration of the request and, at this time, may make the findings indicated in paragraph 3.16.1B above. The HPC shall report its findings to the Planning Director, or designee. If the decision of the HPC is negative, the Planning Director, or designee, shall report the negative recommendation to the governing body, as an informational item.



3. If the HPC finds that the proposed historic district meets the requirements of paragraph 3.16.1B above, then the Planning Director, or designee, shall prepare a Historic District Preservation Plan, in accordance with paragraph 3.16.3B below.
4. Upon the completion of the Historic Preservation Plan, the Planning Director, or designee, shall give notice in accordance with paragraph 3.2.5, Notice and Public Hearings, that the designation of an historic district and the adoption of a Historic District Preservation Plan shall be considered by the HPC at a specified date and time.

B. Historic District Preservation Plan

1. An Historic District Preservation Plan shall include an investigation and report describing the significance of the buildings, structures, features, sites, or surroundings included in the proposed historic district and a description of the boundaries of the proposed historic district, in accordance with NCGS §160A-400.4(1); principles and design review criteria (guidelines) for certificates of appropriateness as required in NCGS §160-400.9(c); and a preservation strategy tailored to the individual needs of the specific area.
2. The preservation strategy shall include, but not be limited to, the following elements:
 - a. The need for the historic district in that area, including the specific reasons why the regulatory provisions of this section should be applied in order to effectively accomplish the preservation of that area;
 - b. The means by which existence of the historic district shall be publicized to historic district property owners and to the general public;
 - c. The principles, design guidelines and criteria to be followed in the historic district for exterior activities involving new construction, alteration, restoration, or rehabilitation and which shall be the basis for the HPC's review and action upon an application for a certificate of appropriateness;
 - d. The means by which technical assistance shall be offered to property owners of the historic district by the HPC, City and County staff, or other groups;
 - e. A description of the various financial incentives that are proposed for use in promoting preservation activities within the historic district, how those incentives would be utilized and how property owners shall be made aware of them; and
 - f. A description of what, if any, measures the HPC, the City or County staff, or other groups will take to encourage economic activity and development which will be conducive to preservation activities within the historic district.

C. Action by the NC Department of Cultural Resources

In accordance with NCGS §160A-400.4(2), the NC Department of Cultural Resources shall make an analysis of and recommendations concerning the investigation and report contained in the Historic District Preservation Plan. Failure of the NC Department of Cultural Resources to submit its written analysis and recommendations within 30 days after a written request for such analysis has been received by the Department shall relieve the governing body of any responsibility for awaiting such analysis, and the governing body may at any time thereafter take action on the proposed historic district and Historic District Preservation Plan.

D. Action by the Historic Preservation Commission

1. The HPC shall conduct a public hearing and give notice in accordance with paragraph 3.2.5, Notice and Public Hearings, on the proposed historic district designation and the Historic District Preservation Plan.
2. The HPC shall review the proposed historic district designation and the Historic District Preservation Plan and shall recommend to the appropriate governing body denial of the request or designation of the area.
3. The HPC shall forward its recommendation on historic district designation to the Planning Commission and to the governing body with a recommended Historic District Preservation Plan. Consideration of the Historic District Preservation Plan shall be part of the consideration of the historic district designation.

E. Action by the Planning Commission

1. The Planning Commission shall conduct a public hearing and give notice in accordance with paragraph 3.2.5, Notice and Public Hearings, on the proposed historic district designation and the Historic District Preservation Plan.
2. The Planning Commission shall review the proposed historic district designation and the Historic District Preservation Plan and shall recommend denial or designation of the area.

F. Action by the Governing Body

1. The governing body shall set a public hearing and shall notify property owners within the proposed historic district of the public hearing in accordance with the public hearing and notification provisions of paragraph 3.2.5, Notice and Public Hearings.
2. The governing body, shall hold a public hearing to consider the request to designate the historic district and the adoption of the Historic District Preservation Plan. The protest petition procedures as established for a petition for zoning map change in paragraph 3.5.13, Valid Protest Petition, shall apply to the designation or amendment of an historic district.
3. If the governing body, shall deny a request for designating an historic district, property owners may not initiate a new request to designate an historic district for the same area until at least one year after the governing body's action to deny the request.
4. When the governing body, designates an area as an historic district, the Historic District Preservation Plan for the particular historic district shall become City or County policy and all appropriate public bodies or administrative officials cited as having implementation responsibilities shall be directed to use their best efforts to ensure the effective implementation of the Plan as it is written.

3.16.4 Designation of an Historic Landmark

A. Criteria for Designation

1. A building, structure, site, area or object may be considered for designation as an historic landmark only if all of the following three criteria are met:

- a. The property must not currently be undergoing renovation unless it has been approved for state or federal tax credits in accordance with the Secretary of Interior Standards;
- b. The HPC must deem and find that the building, structure, site, area, or object meets at least one of the three following criteria:
 - (1) Individual listing on the National Register of Historic Places or on the Study List;
 - (2) Statewide Significance status granted by the State Historic Preservation Office;
 - (3) Integrity of location, design, setting, materials, and workmanship, feeling and association on the whole, and:
 - (a) Is associated with events that have made a significant contribution to the broad patterns of local, regional, or national history; or
 - (b) Is associated with the lives of persons significant in local, regional, national history; or
 - (c) Embodies the distinctive characteristics of a type, period, or method of construction; represents the work of a master; possesses high artistic values (i.e., the architecture alone is significant in its own right); or
 - (d) Has yielded, or may be likely to yield, information important to Durham's history or prehistory.
- c. The governing body must deem and find that the property possesses distinction within the context or period of significance.

Commentary: A building, structure, site, area or object whose components lack individual distinction may still be considered a landmark if the whole is significant.

- 2. A property shall be designated as a historic landmark only with the consent of the property owner or owners.

B. Action by the Historic Preservation Commission

- 1. In accordance with NCGS §160A-400.6(2), the HPC shall make or cause to be made an investigation and report on the prehistorical, historical, architectural, educational or cultural significance of each building, structure, site, area or object proposed for designation or acquisition. The investigation and report shall be forwarded to the Division of Archives and History, North Carolina Department of Cultural Resources.
- 2. The HPC shall hold a public hearing and give notice in accordance to paragraph 3.2.5, Notice and Public Hearings, on the proposed ordinance of designation. It shall recommend to the governing body, denial of designation or approval of designation of the proposed historic landmark.

C. Action by the NC Department of Cultural Resources

In accordance with NCGS §160A-400.6(3), the NC Department of Cultural Resources shall be given the opportunity to review and comment upon the substance and effect of the designation of any historic landmark. Any comments shall be provided in writing. If the NC

Department of Cultural Resources does not submit its comments within 30 days following receipt by the Department of the investigation and report, the HPC and the governing body are relieved of any responsibility to consider such comments.

D. Action by the Governing Body

1. The governing body, after ensuring that the other governing body has been notified, shall hold a public hearing and give notice in accordance paragraph 3.2.5, Notice and Public Hearings, on the proposed ordinance of designation.
2. Following the public hearing, the governing body may adopt the ordinance of designation as proposed, adopt the ordinance of designation with any amendments it deems necessary, or reject the proposal.

E. Adoption of an Ordinance of Designation

Upon compliance with the required procedures of this section, the governing body may, for its respective jurisdiction, adopt and from time to time amend or repeal an ordinance designating one or more historic landmarks. The ordinance shall include the following information:

1. A description of each property designated by the ordinance, including the tax map reference number for the property. The ordinance shall clearly indicate what elements of the property are designated as an historic landmark. Examples of those elements are a building's interior, its exterior, any specific or all outbuildings, other site elements or the entire site;
2. The name or names of the owner or owners of the property;
3. A description of those elements of the landmark that are integral to its educational, cultural, historical, architectural or prehistorical value;
4. The land area of the property;
5. A note that, for each building, structure, site, area or object, the waiting period set forth in paragraph 3.17.3, Certificates of Appropriateness for Demolition, Destruction and Relocation, of this Ordinance shall be observed prior to its demolition; and
6. Any other information the HPC deems necessary.

F. Historic Markers

The ordinance designating the landmark may also provide for suitable markers on the property noting that the landmark has been so designated, including but not limited to signs, plaques or other appropriate indicators. If the owner consents, the sign shall be placed upon the property. If the owner objects, the sign shall be placed on a nearby public right-of-way.

G. Action Following Designation

Upon adoption of the ordinance of designation, the following provisions shall apply:

1. The owners and occupants of each designated historic landmark shall be given written notification of such designation by the Planning Director, or designee, insofar as reasonable diligence permits.
2. One copy of the ordinance and each amendment thereto shall be filed by Planning Director, or designee, in the Office of the Register of Deeds of Durham County. Each historic landmark designated in the ordinance shall be indexed according to the name of

the owner of the property in the grantee and grantor indexes in the Office of the Register of Deeds.

3. One copy of the ordinance and each amendment thereto shall be given to the Inspections Director, or designee.
4. For historic landmarks, one copy of the ordinance and each amendment thereto shall be kept on file in the Office of the City or County Clerk, as appropriate, and made available for public inspection at any reasonable time.
5. The fact that a building, structure, site, area or object has been designated as an historic landmark shall be clearly indicated on all maps maintained by Durham County for tax purposes for such period as the designation remains in effect.
6. The Planning Director, or designee, shall give notice of the adoption of an ordinance of designation and any amendment thereof to the Durham County Tax Supervisor. The designation and any recorded restriction upon the property limiting its use for preservation purposes shall be considered by the Tax Supervisor in appraising it for tax purposes.

3.16.5 Designation of a Landmark Sign

A. Procedure

The following procedure shall be used to designate signs as Landmark Signs. No sign shall be considered a Landmark Sign unless it has received that designation through this process.

1. An application for a landmark sign designation shall be submitted in accordance with paragraph 3.2.4, Application Requirements.
2. The Planning Director, or designee, shall forward the application and all supporting material to the Historic Preservation Commission.
3. The applications shall be considered by the Historic Preservation Commission. The Commission shall review the application and may designate the sign as a Landmark Sign, deny the designation, or request additional information in order to make a decision. A sign which is denied a designation shall be considered a nonconforming sign which shall be removed.
4. If the sign is designated as a Landmark Sign, a copy of the application shall be submitted to the Inspections Department. After designation, the applicant shall have 60 days to bring any signs that pose a hazard into a structurally safe condition. Failure to assure that the signs are safe and do not pose a hazard shall result in loss of the Landmark Sign designation. The Inspections Department shall issue a sign permit for the sign if the sign is found to be structurally safe. Landmark Signs shall conform to all other provisions of this section not in conflict with the privileges of the landmark designation.
5. Landmark signs shall be subject to the privileges and regulations of Sec. 11.7, Landmark Signs, but Article 11, Sign Standards, shall otherwise not apply.

B. Approval Criteria

The Historic Preservation Commission may establish a schedule to review applications for Landmark Sign designations. To qualify as a Landmark Sign, the sign shall meet all of the following criteria:

1. Be recognized as important to the culture or history of the jurisdiction, or possess unique characteristics, or incorporate materials or craftsmanship not commonly found in newer signs.
2. Bear a close resemblance to its appearance when it was installed.

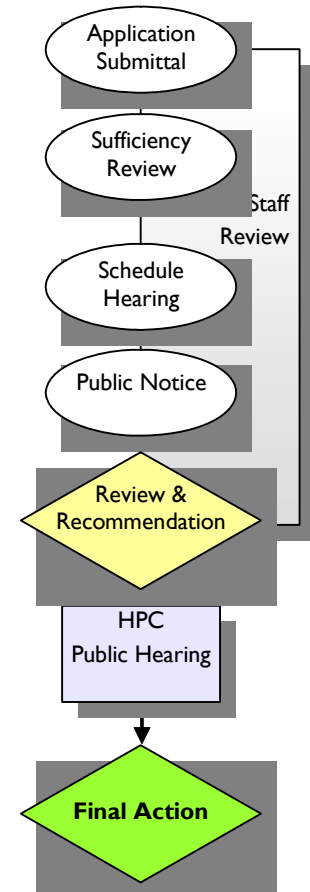
3.16.6 Repeal of Historic District or Historic Landmark Designation

- A. The governing body may repeal an ordinance designating an historic district or an historic landmark. The repeal process shall be in accordance with NCGS §160A-400.6. The governing body's action to repeal an ordinance of designation shall include the reasons for the repeal and a review by the State Historic Preservation Office.
- B. When such repeal occurs, the Planning Director, or designee, shall notify the HPC and the property owner or owners. When such repeal occurs of an historic landmark designation, the Planning Director, or designee, shall also notify the Register of Deeds for Durham County and the Durham County Tax Supervisor.

Sec. 3.17 Certificate of Appropriateness

3.17.1 Applicability

- A. From and after the designation of an historic district or historic landmark, no exterior feature or designated portion of any building or other structure (including masonry walls, fences, light fixtures, steps, pavement, and other appurtenant features) nor any above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved or demolished within or on such historic district or historic landmark until after an application for a certificate of appropriateness as to the exterior feature or designated portion has been submitted to and approved by the Historic Preservation Commission (HPC).
- B. The City or the County shall not grant any building permit or other permit for the purposes of constructing, altering, moving or demolishing any structure within or on an historic district or historic landmark for which a certificate of appropriateness has not been approved. A certificate of appropriateness shall be required whether or not a building permit is required. Any building permit or other permit not issued in conformity with this section shall be invalid. A certificate of appropriateness may be issued by the HPC subject to reasonable conditions necessary to carry out the purposes of this Ordinance.
- C. For the purposes of this section, the term "exterior feature" shall include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building, and the type and style of all windows, doors, light fixtures, signs and other appurtenant features. In the case of outdoor advertising signs, the term "exterior features" shall be construed to mean the style, material, size and location of all such signs. These "exterior features" may include historic signs and significant landscape, archaeological and natural features of the area.
- D. For the purposes of this section, the term "designated portion" shall mean any portion of an historic landmark that was included in the ordinance designating the landmark, including the main structure or structures, the interior or portions of the interior, any outbuildings or secondary structures, site elements and landscaping.



3.17.2 Circumstances Not Requiring Certificates of Appropriateness

- A. Nothing in this Ordinance shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in the historic district or on an historic landmark which does not involve a substantial change in the design, material, or outer appearance thereof,

provided that any required building permit is obtained. Examples of this work shall include, but not be limited to, the following:

1. Caulking or reglazing windows;
 2. Minor repairs to windows, doors, siding, gutters, etc;
 3. Replacement of existing mechanical equipment;
 4. Repairing or repaving of flat concrete work in side and rear yards;
 5. Repairing or repaving of existing street yard paving, concrete work and walkways, if the material the same or similar in appearance is used;
 6. Roofing work, if no change in appearance occurs;
 7. Foundation work, if no change in appearance occurs; or
 8. Chimney work, if no change in appearance occurs.
- B. Nor shall this Ordinance be construed to prevent the construction, reconstruction, alteration, restoration or demolition of any such feature which is determined to be a threat to the public safety. The Inspections Director, or designee, shall certify in writing to the HPC that such action is required for the public safety because of an unsafe or dangerous condition.
- C. Nothing herein shall be construed to prevent a property owner from making any use of his or her property not prohibited by other statutes, ordinances or regulations.
- D. No certificate of appropriateness shall be required for interior changes. However, this does not excuse the property owner from obtaining required building permits for interior work.

3.17.3 Certificates of Appropriateness for Demolition, Destruction and Relocation

- A. An application for a certificate of appropriateness authorizing the demolition, destruction or relocation of a structure in a designated historic district or of a designated historic landmark shall not be denied. However, the effective date of such a certificate of appropriateness may be delayed for a period of up to 365 days from the date of approval. This maximum period of delay shall be reduced by the HPC when it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such structure or landmark by virtue of the delay. During such period, the HPC may negotiate with the owner and with any other parties in an effort to find a means of preserving the structure or landmark.
- B. If the HPC finds that the structure has no particular significance or value toward maintaining the character of an historic district, it shall waive all or part of such period and authorize earlier demolition or removal.
- C. An application for demolition, destruction and relocation of a building, site or structure determined by the State Historic Preservation Officer as having statewide significance as defined in the criteria of the National Register of Historic Places may be denied except where the HPC finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return from such structure or landmark by virtue of the denial.

3.17.4 Master Certificates of Appropriateness

- A. Work done by the City and County and by public utility companies within any historic district shall be subject to the provisions of this section. However, rather than obtaining individual certificates of appropriateness for each proposed project in an historic district, the City and County and public utility companies may instead obtain a master certificate of appropriateness from the HPC.
- B. The provisions of this section that apply to certificates of appropriateness shall also apply to master certificates of appropriateness. No master certificate of appropriateness shall be valid for a period greater than four years from the date of issuance.
- C. In addition to acquiring a master certificate of appropriateness, the City and County and any public utility companies shall notify the City Manager or County Manager, as appropriate, prior to performing any work within any historic district. In emergency situations, as determined by the Inspections Director, or designee, notification by the next work day is acceptable. Such work shall be done in accordance with the principles and design criteria adopted for the historic district as part of the Historic District Preservation Plan. The City Manager or County Manager, as appropriate, may inspect all work done pursuant to a master certificate of appropriateness.

3.17.5 Administrative Certificate of Appropriateness

- A. With the concurrence of the chair of the HPC, the Planning Director or designee may approve or amend certificates of appropriateness for the following activities, or may refer them to the HPC for a decision:
 - 1. Activities expressly authorized by the HPC;
 - 2. Minor design changes to projects for which a certificate of appropriateness has been issued by the HPC; or
 - 3. Anything not specifically covered by this section that the Planning Director or designee determines is not so significant as to impair or affect historic, architectural, or aesthetic character.
- B. A public hearing or public notice shall not be required unless the application is referred to the HPC for a major or minor certificate of appropriateness.

3.17.6 Application Requirements

- A. An application for a certificate of appropriateness shall be submitted in accordance with paragraph 3.2.4, Application Requirements.
- B. An applicant may file with the application any additional relevant information bearing on the application.

3.17.7 Notification of Affected Property Owners

Prior to the issuance or denial of a certificate of appropriateness, the Planning Director, or designee, shall take such action as may be reasonable to inform the owner of any property likely to be materially affected by the application.

3.17.8 Notification of the Commission

The Planning Director, or designee, shall notify the members of the HPC at least seven calendar days before its regularly scheduled meeting of any pending applications for certificates of appropriateness.

3.17.9 Action by the Historic Preservation Commission

- A.** The HPC shall hold a public hearing for a major certificate of appropriateness. A public hearing shall not be required for a minor certificate of appropriateness. Public notice of applications for major and minor certificates of appropriateness shall be provided pursuant to paragraph 3.2.5, Notice and Public Hearings.
- B.** As part of its review procedure, the HPC may view the premises and seek the advice of the North Carolina Department of Cultural Resources or other expert advice as it may deem necessary under the circumstances.
- C.** The HPC shall approve, approve with modifications or conditions, or disapprove an application for a certificate of appropriateness or master certificate of appropriateness.
- D.** Prior to final action on an application for a certificate of appropriateness in an historic district, the HPC, using the principles and design review criteria adopted pursuant to paragraph 3.16.3B, Historic District Preservation Plan, shall make findings of fact indicating the extent to which the application is or is not consistent with the historic character and qualities of the historic district.
- E.** Prior to final action on an application for a certificate of appropriateness for an historic landmark, the HPC, using the principles and design review criteria adopted pursuant to 3.16, Historic District or Landmark Designation, shall make findings of fact indicating the extent to which the application is or is not consistent with the principles and design review criteria.
- F.** The HPC may not deny a certificate of appropriateness for demolition except as specified in paragraph 3.17.3, Certificate of Appropriateness for Demolition, Destruction and Relocation.

3.17.10 Approval Criteria for Historic Districts

- A.** For historic districts, the intent of these regulations is to ensure, insofar as possible, that buildings or structures in the historic district shall be in harmony with other building or structures located therein. However, it is not the intention of these regulations to require the reconstruction or restoration of individual or original buildings or to prohibit the demolition or removal of such buildings or to impose architectural styles from particular historic periods. In considering new construction, the HPC shall encourage contemporary design which is harmonious with the character of the historic district.
- B.** In granting a certificate of appropriateness, the HPC shall take into account, in accordance with the principles and design review criteria of the Historic Preservation Plan adopted for the historic district:
 - 1.** The historic or architectural significance of the structure under consideration in relation to the historic value of the district;
 - 2.** The exterior form and appearance of any proposed additions or modifications to that structure; and
 - 3.** The effect of such additions or modifications upon other structures in the vicinity.

3.17.11 Approval Criteria for Historic Landmarks

- A.** In granting a certificate of appropriateness, the HPC shall take into account in accordance with the principles and design review criteria adopted for historic landmarks:
 - 1.** The historic or architectural significance of the structure, site or setting under consideration; and
 - 2.** The exterior form and appearance of any proposed additions or modifications to the structure, site or setting.
- B.** The intent of these regulations is to ensure, insofar as possible, that changes to buildings or structures designated as historic landmarks shall be in harmony with the historic character that was cited as the reasons for designation.

3.17.12 Deferral of Application

- A.** An applicant for a certificate of appropriateness may request that the HPC's consideration of the application be deferred to a specific date.
- B.** Upon such request, the Planning Director, or designee, shall have the authority to grant the deferral.
- C.** A request for deferral shall be made in writing to the Planning Director, or designee, at least ten days prior to the scheduled consideration of the application and shall indicate the date to which the deferral is requested and the reasons for the deferral. Only one deferral shall be permitted for each application.

3.17.13 Time Limits

- A.** Final action shall be taken upon any application for a certificate of appropriateness within 180 days after the complete application is submitted to the Planning Director or designee. Such 180-day time period shall include any continuance or deferred consideration by the HPC or deferral granted as requested by the applicant under paragraph 3.17.12, Deferral of Application. If final action is not taken within such 180-day time period, the application shall be deemed approved.
- B.** A master certificate of appropriateness shall expire four years after the effective date, and all other certificates of appropriateness shall expire two years after the effective date, if:
 - 1.** A building permit or other development permit has not been issued;
 - 2.** A building or other development permit has expired; or
 - 3.** If work not requiring a permit has not been initiated.

3.17.14 Submission of New Application

If the HPC denies an application for a certificate of appropriateness, a new application affecting the same property may be submitted only if substantial changes are made in plans for the proposed construction, reconstruction, alteration, restoration, moving or demolition, or if conditions related to the historic district or historic landmark or surrounding uses have changed substantially.

3.17.15 Local and State Coordination

The HPC shall use all reasonable efforts to expedite any concurrent process with the North Carolina Department of Cultural Resources if such a process is desired by the applicant for

the purpose of securing both a certificate of appropriateness and a Federal historic preservation tax credit.

3.17.16 Specific Enforcement

- A.** Compliance with the terms of a certificate of appropriateness shall be enforced by the Inspections Director, or designee. Construction or other work which fails to comply with a certificate of appropriateness shall be a violation of this Ordinance. The discontinuance of work for a period of six months shall be considered a failure to comply with a certificate of appropriateness.
- B.** Nothing contained in this section shall prohibit, impair or limit in any way the power of the City or County to prevent the construction, reconstruction, alteration, restoration or removal of buildings, structures, appurtenant fixtures or outdoor signs in the historic district in violation of the provisions of this Ordinance. The enforcement of any remedy provided herein shall not prevent the enforcement of any other remedy or remedies provided herein or in other ordinances or laws.

3.17.17 Appeal

An appeal of a decision of the Commission in granting or denying any certificate of appropriateness is taken to the Board of Adjustment. An appeal may be taken by any aggrieved party, shall be taken within times prescribed by the Commission's Rules of Procedures, and shall be in the nature of *certiorari*. Appeal of the Board of Adjustment action may be taken by filing a petition for *certiorari* with the Durham County Superior Court.

Sec. 3.18 Demolition by Neglect (City Only)

3.18.1 Applicability

Owners of certain historic properties are required to maintain their properties and not allow them to fall into disrepair. The requirements of this subsection are applicable only to certain properties, termed "historic properties" in this subsection. That term as used in this subsection is defined to include designated historic landmarks and properties identified as "contributing" or "pivotal" in designated historic districts.

A. Conditions of Neglect Defined and Prohibited

Owners shall maintain or cause to be maintained the exterior and structural features of their historic properties and not allow conditions of neglect to occur on such properties. Conditions of neglect are as defined below. It shall be a violation of this Ordinance to not remedy a condition of neglect within the period of time set by a final administrative determination, as described in subsequent subsections of this Ordinance. Conditions of neglect include the following:

1. Deterioration of exterior walls, foundations, or other vertical support that causes leaning, sagging, splitting, listing, or buckling.
2. Deterioration of flooring or floor supports, roofs, or other horizontal members that causes leaning, sagging, splitting, listing, or buckling.
3. Deterioration of external chimneys that causes leaning, sagging, splitting, listing, or buckling.
4. Deterioration or crumbling of exterior plasters or mortars.
5. Ineffective waterproofing of exterior walls, roofs, and foundations, including broken windows or doors.
6. Defective protection or lack of weather protection for exterior wall and roof coverings, including lack of paint, or weathering due to lack of paint or other protective covering.
7. Rotting, holes, and other forms of decay.
8. Deterioration of exterior stairs, porches, handrails, window and door frames, cornices, entablatures, wall facings, and architectural details that causes delamination, instability, loss of shape and form, or crumbling.
9. Heaving, subsidence, or cracking of sidewalks, steps, or pathways.
10. Deterioration of fences, gates, and accessory structures.
11. Deterioration that has a detrimental effect on the surrounding historic district, or on the special character of the historic landmark.
12. Deterioration that contributes to a hazardous or unsafe condition.

3.18.2 Process and Administration

A. Director Investigation and Determination

1. Initiation by Petition

The initial determination that there is a condition of neglect shall be made by the Planning Director, or designee, after an investigation that is initiated by a petition from

any person who is familiar with the subject property, which may include but not be limited to a City employee.

2. Notice of Investigation

On receipt of a petition, the Director, or designee, shall notify the owners in writing of the allegation and the process for making a decision regarding the petition, including any applicable deadlines. Among other things, the notice shall offer the owner the opportunity to meet in person with the Director, or designee, and to present any relevant information. Notice shall be delivered by personal service, or by certified or registered mail, return receipt requested. If certified mail is refused or unclaimed, notice may be delivered by first class mail, and shall be considered effective if such mail is not returned by the post office within 15 days of mailing. In the case of notice by first class mail, notice shall also be posted on the property. Notice of the investigation may also be given to the owners of nearby or adjacent properties or neighborhood associations.

3. Responsibilities of Director

The Planning Director or designee shall:

- a. Investigate the allegation that a condition of neglect exists;
- b. Hold one or more meetings at a time to be set by the Director, or designee, in which the owner, other persons who have received notice, or other interested persons may give information;
- c. Issue a written determination, supported by findings of fact, regarding the allegation within 45 days of the owner's receipt of notice;
- d. Include within the determination a time period for correcting the condition of neglect, if a condition of neglect has been found;
- e. Retain all information presented by the owner or other persons;
- f. Deliver the written determination through any of the means for delivery of notice, as described above;
- g. Designate the written determination as a final administrative determination with the right of appeal to the HPC; and
- h. Include information regarding rights to a *de novo* hearing before the HPC.

B. Suspension of Process

The above process may be suspended in the event the owner agrees in writing to correct the alleged condition of neglect within a time period determined to be reasonable by the Director, or designee. If the condition is not corrected within that time period, the process shall continue where it was suspended.

C. Appeal of Director's Determination

If the property owner disagrees with the Director's determination, the owner can appeal and may request a *de novo* hearing before the HPC. The request shall be delivered to the Planning Department, in writing, within 30 days of receipt of the Director's determination. The HPC shall hold a quasi-judicial hearing on the issue of whether demolition by neglect is occurring on the property. Procedures that would be followed by the Board of Adjustment (BOA) in a quasi-judicial proceeding shall be used. The Director's determination shall be

considered an administrative determination, which has been appealed to the HPC, as the designated Planning Agency under GS 160A-388 or 153A-321 and all procedures applicable to the Board of Adjustment in GS 160A-388 and GS 153A-345 shall apply to such hearings. The HPC's determination to overturn the administrative determination shall be passed by the standards established in paragraph 2.4.6. The HPC's written decision shall include findings of fact and conclusions regarding demolition by neglect consistent with this subsection. It shall be delivered to the appealing party by certified mail, return receipt requested. Appeal to the Courts can be had by *certiorari* as is provided for an appeal of a Board of Adjustment decision. If the decision is not appealed it shall be considered a final decision subject to enforcement with no rights of appeal.

D. Safeguards from Undue Economic Hardship

1. Right of Claim of Economic Hardship

The property owner is entitled to make a claim of undue economic hardship if the owner is unable to make needed repairs to the property because it is economically unfeasible.

2. Issuance of Stay for Economic Hardship

In the event that the owner and/or other parties in interest do not wish to contest the determination regarding the condition of neglect, but do wish to petition for a claim of undue economic hardship, the Director's order shall be stayed until after the HPC's determination regarding the claim.

3. Process

If a claim of undue economic hardship is made, the Planning Director or designee shall receive all information from the property owners that the HPC is entitled to receive pursuant to this Ordinance, make a determination regarding whether there is undue economic hardship, and develop a plan for dealing with such hardship, if it is found to exist. The recommendation and plan shall be sent to the owner, by certified mail, return receipt requested, with notice of the owner's rights to appeal to the HPC within 30 days of receipt. If the owner disagrees with the recommendation and plan, the owner may request a hearing before the HPC. In the event of such a request, the hearing shall be a quasi-judicial hearing, in the nature of a BOA hearing and the decision shall be in writing, supported by findings and conclusions. The Planning Director's determination as to economic hardship and the plan for dealing with that hardship shall be considered a final administrative determination, and any HPC decision altering such recommendation or plan shall be passed by the standards established in paragraph 2.4.6, Decisions.

4. Evidence Regarding Undue Economic Hardship

When a claim of undue economic hardship is made owing to the effects of this Article, the owner and/or parties in interest shall, where reasonably possible, provide the evidence below, describing the circumstances of hardship, and any additional evidence requested by the Director, or designee, or HPC or evidence the owner considers relevant.

- a. Nature of ownership (individual, business, or nonprofit) or legal possession, custody, and control.
- b. Financial resources of the owner and/or parties in interest.
- c. Cost of repairs.
- d. Assessed value of the land and improvements.
- e. Real estate taxes for the previous two years.
- f. Amount paid for the property, date of purchase, and party from whom purchased, including a description of the relationship between the owner and the person from whom the property was purchased, or other means of acquisition of title, such as by gift or inheritance.
- g. Annual debt service, if any, for previous two years.
- h. Any listing of the property for sale or rent, price asked, and offers received, if any.
- i. Annual gross income, if any, from the property for the previous two years.
- j. Itemized operating and maintenance expenses for the previous two years, including proof that adequate and competent management procedures were followed.
- k. Annual cash flow, if any, for the previous two years.

5. Plan to Relieve Economic Hardship

A recommended plan to relieve the economic hardship shall include, but is not limited to, property tax relief as may be allowed under North Carolina law, loans or grants from the City, the County, or other public, private, or nonprofit sources, acquisition by purchase or eminent domain, changes in applicable zoning regulations, or relaxation of the provisions of this Article sufficient to mitigate the undue economic hardship. The Director, or designee, shall issue an order regarding the time period during which the property should be repaired, taking into account the provisions of the recommended plan.

E. Other City Powers; City's Election of Remedies

Nothing contained within this Article shall diminish the City's power to declare a building unsafe or in violation of the minimum housing code or any other applicable statute or code. In addition, the procedures described herein are mandatory only for determinations being made solely under the authority of this section. Where other sections of the City Code apply, the City may, in its discretion, choose to process any action regarding the property under such other provisions alone, or under such provisions along with these provisions concurrently, or solely under these provisions. The City may also suspend the procedures of this section at any time if an action has been initiated under other applicable law.

F. Penalties and Remedies

Enforcement of this Article shall be by any one or more of the following methods, and the institution of any action under any of these methods shall not relieve any party from any other civil or criminal proceeding prescribed for violations and prohibitions.

1. Equitable Remedy

The City may apply for any appropriate equitable remedy to enforce the provisions of this Article.

2. Order of Abatement

The City can apply for and the court may enter an order of abatement. An order of abatement may direct that improvements or repairs be made, or that any other action be taken that is necessary to bring the property into compliance with this Article. Whenever the party is cited for contempt by the court and the City has executed the order of abatement, the City shall have a lien on the property for the cost of executing the order of abatement.

3. Civil Penalty

Civil penalties can be assessed for failure to comply with a final administrative determination or an un-appealed HPC decision under the provisions and guidelines for assessing such penalties for zoning code violations. Prior to imposing a civil penalty the City-County Planning Department shall deliver a written notice by personal service or by registered mail or by certified mail, return receipt requested, to the person responsible for the violation indicating the nature of the violation and ordering corrective action. Where the violation is the failure to remedy a condition of neglect within the time periods provided by the Director, or designee, or the HPC no additional time period for compliance need be given. The notice shall include information regarding the possible assessment of civil penalties and other possible enforcement actions. If this notice is appealed to the Board of Adjustment, the Board shall not rehear any issue that was heard by the HPC or could have been so heard had an appeal to the HPC been made. Rather, the Board of Adjustment shall limit the scope of its review to whether there has been compliance with the Director's determination or the HPC's determination, as applicable.

Sec. 3.19 Text Amendment

3.19.1 General

- A. The governing bodies are the approving authority for amendments to the text of this Ordinance.
- B. Amendments to the text of this Ordinance shall be made in accordance with the provisions of this section.
- C. A request to amend the text of this Ordinance may be initiated by the governing body, the Board of Adjustment, the Planning Commission, the City Manager, the County Manager, the Planning Director, or designee, or a citizen.

3.19.2 Action by the Planning Director

- A. The Planning Director, or designee, shall be responsible for review and recommendation regarding amendments to the text of this Ordinance that affect only City or County jurisdictions.
- B. When a text amendment is initiated, the Planning Director, or designee, shall draft an appropriate ordinance and present that ordinance to the Planning Commission for review and recommendation at a public hearing.
- C. A request to amend the text of this Ordinance may be initiated by the governing body, the Board of Adjustment, the Planning Commission, the City Manager, the County Manager, the Planning Director, or designee, or a citizen.

3.19.3 JCCPC Review

The JCCPC shall be responsible for review and direction regarding amendments to the text of this Ordinance that affect both the City and County jurisdictions prior to review by the Planning Commission. This responsibility does not create a legal obligation for review of text amendments. Among other instances, review may not occur in the event that the City and County Managers, after consultation with the chair and vice-chair of the JCCPC, determine that delay is not in the public interest.

3.19.4 Action by the Planning Commission

A. General Procedures

- 1. Before making any recommendation on a text amendment, the Planning Commission shall consider any recommendations from the Planning Director, or designee, and shall conduct a public hearing where interested parties may be heard.
- 2. Notice and public hearing requirements shall be in accordance with paragraph 3.2.5, Notice and Public Hearings.
- 3. The Commission shall make its recommendation within 90 days of its initial public hearing unless the text amendment is granted expedited status.
- 4. When a recommendation is not made within the time periods established in this section, the governing body may process the request without a Commission recommendation.

B. Changed Application

If the applicant makes significant changes to the application for a text amendment after the Commission has made its recommendation, the Planning Director, or designee, may refer the modified request back to the Commission for an additional public hearing.

C. Expedited Hearing

1. If the governing body has set an expedited hearing concerning a request, in accordance with paragraph 3.19.5B, Expedited Hearing, a public hearing before the Commission shall be held at the first available hearing date or prior to the hearing before the governing body.
2. The Commission shall make a recommendation based on the approval criteria in paragraph 3.5.10, Review Criteria, as appropriate.
3. The Planning Commission may not continue, nor may a deferral be granted for, a request that is subject to an expedited public hearing.

3.19.5 Action by Governing Body

A. General Procedures

1. Before taking action on a text amendment, the governing body shall consider the recommendations of the Planning Commission and Planning Director, or designee, and shall conduct a public hearing.
2. Except for an emergency moratorium or a short term moratorium of 60 or fewer days (which shall comply with the provisions of paragraph 3.19.6, Development Moratoria), notice and public hearing requirements shall be in accordance with paragraph 3.2.5, Notice and Public Hearings.
3. Following the public hearing, the governing body may approve the amendment, deny the amendment, or send the amendment back to the Planning Commission or a committee of the governing body for additional consideration.
4. Text amendments, if approved, shall only have applicability within the jurisdiction of the governing body that approved the change.

B. Expedited Hearing

1. The governing body, in situations in which it determines certain standards have been met, may expedite the hearing process on a proposed or prospective amendment.
2. The governing body may consider a written request requesting an expedited hearing process. The request shall identify and support the reasons for such expedited consideration.
3. In order to grant the request, the governing body shall find that at least one of the criteria below has been met:
 - a. Deadlines set by the local, State or Federal government for receipt of application for needed funding, designation or other regulations concerning the property make expedited consideration necessary;
 - b. The prospective text amendment results from an emergency beyond the control of the applicant, such as response to a disaster;

- c. The prospective text amendment addresses an urgent matter of public health or safety; or
 - d. The prospective text amendment addresses issues raised in threatened, actual, or potential litigation against the jurisdiction that made expedited consideration necessary.
- 4. A hearing before the governing body may occur upon the receipt of a Planning Commission recommendation, or the expiration of a 30-day period, whichever comes earlier.

3.19.6 Development Moratoria

A. Statutory Procedures

Development moratoria, if necessary, shall be considered and processed in accordance with the special notice provisions, particular findings, and other requirements of NCGS 160A-381(e) and NCGS 153A-340(h).

B. Resolution

A public hearing to impose either a moratorium of 60 or fewer days (hereafter a “short-term moratorium”) or a lengthier moratorium of 61 days to a year may be initiated by a governing body for that body’s jurisdiction upon passage of a resolution, including appropriate supportive findings, that calls for a public hearing. Passage of such a resolution shall be considered a “call for public hearing” under the above-cited statutes and shall allow the jurisdiction to stop acceptance, review, and approval of applications for development approvals described in the above-cited statutes or such other similar development approvals created under this Ordinance or other development ordinances.

C. Notice and Hearing

If the call is for a short-term moratorium, Planning Commission review shall not be required, and one published notice not less than 7 days prior to the hearing shall be given, as allowed under the above-cited statutes, in lieu of other notices required by statute or this Ordinance. If the call is for a lengthier moratorium, the procedure followed shall be as set forth in the provisions for expedited hearings for text amendments above. The need for a moratorium shall be considered “an urgent matter of public health or safety” as required for approval of an expedited hearing. Emergency moratoria shall not require compliance with any procedures set forth in this Ordinance, other than an unadvertised public hearing, and an ordinance making the findings required below.

D. Duration

The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions. Any ordinance establishing a lengthier moratorium shall include a provision that allows for termination of the moratorium by resolution of the governing body prior to the express expiration date if the conditions requiring the moratorium have been adequately addressed so that the moratorium is no longer necessary.

E. Ordinance Findings

An ordinance establishing a moratorium shall contain all the required findings set forth in NCGS 160A-381(e) and NCGS 153A-340(h), including but not limited to the conditions that

necessitate the moratorium, alternatives, development approvals subject to the moratorium, termination date, and reasonableness of the moratorium period.

F. Extensions

A moratorium shall only be extended upon compliance with NCGS 160A-381(e) and NCGS 153A-340(h) and the existence of new facts and conditions warranting an extension.

G. Emergency Moratorium

In the event that there is an imminent and substantial threat to public health or safety, an ordinance imposing an emergency moratorium can be considered by a governing body without prior resolution or public notice of the hearing on such moratorium.

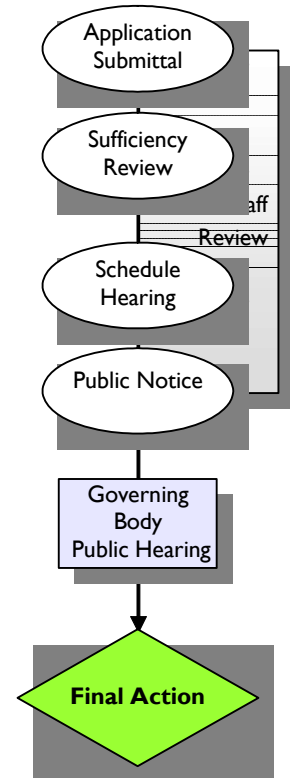
Sec. 3.20 Statutory Vested Rights Determination

3.20.1 Applicability

- A. This section establishes a procedure for obtaining a statutory vested right in conformance with NCGS §153A-344.1 and NCGS §160A-385.1.
- B. New or amended zoning regulations shall not apply to a property with an established vested right until the vested right expires or is terminated.
- C. A vested right may be established upon approval of a "site specific development plan." In order to qualify as a "site specific development plan," a plan shall be a development plan approved as a site plan or preliminary plat in accordance with Sec. 3.5, Zoning Map Changes; a preliminary plat approved in accordance with Sec. 3.6, Subdivision Review; or a site plan approved in accordance with Sec. 3.7, Site Plan Review.

3.20.2 Application Requirements

- A. An application for vested rights determination shall be submitted in accordance with paragraph 3.2.4, Application Requirements.



- B. Applications shall include, at a minimum, the following information in addition to the standard information required pursuant to paragraph 3.2.4, Application Requirements:
 - 1. Information on the proposed uses of the property that the applicant wishes to vest;
 - 2. The length of time for which vesting is requested;
 - 3. A listing of those provisions of this Ordinance from which vesting is requested;
- C. Landowners seeking zoning vested rights on plats, special use permit applications, or other plans that would not normally receive site plan approval, can apply for vested rights protection through submittal of an application which contains the identical information, fee, and plans required for a complete site plan application and an additional fee for a vested rights public hearing.

3.20.3 Action by the Planning Director

Once the application has been determined complete, the Planning Director, or designee, shall schedule a public hearing, give public notice as set forth in paragraph 3.2.5, Notice and Public Hearings, and forward a copy of the application with all related materials to the appropriate governing body.

3.20.4 Action by the Governing Body

- A. The governing body may hold the vested rights public hearing at the same time that the site plan is considered for approval.
- B. Approval by the governing body shall confer upon the owner of the property a zoning "vested right" as defined in NCGS §160A-385.1 and NCGS §153A-344.1, effective on the date of approval. The governing body may condition the approval upon terms and conditions reasonably necessary to protect the public health, safety, and welfare.

3.20.5 Effect of Zoning Vested Rights

- A. Following approval or conditional approval of a site specific development plan, nothing in this section shall exempt such a plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval.
- B. Nothing in this section shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or with this Ordinance.
- C. The establishment of a zoning vested right shall not preclude the application of new laws or regulations as is allowed under NCGS §160A-385.1. In addition, it shall not preclude overlay zoning that imposes additional requirements, but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to land use regulation by the City or County. Otherwise applicable new or amended regulations shall become effective with respect to property that is subject to a site specific development plan upon the expiration or termination of the vested right in accordance with this section.
- D. A zoning vested right is not a personal right, but shall be attached to and run with the applicable property. After approval of a site specific development plan, all successors to the original landowner shall be entitled to exercise such right while applicable.

3.20.6 Duration

- A. A zoning right that has been vested as provided in this section shall remain vested for the period specified by the governing body, which shall be a minimum of two years but no more than five years from the date of the vested rights determination. The expiration and validity of site plans and plats issued pursuant to the vested rights determination that extend beyond the vesting period shall be governed by the provisions of this ordinance. Substantial amendments and modifications to an approved site specific development plan shall not be accorded "vested rights" unless such changes are processed as a new "site specific development plan." Each approved site specific development plan shall contain the following notation: "Approval of this plan establishes a zoning vested right under NCGS §160A-385.1 or NCGS §153A-344.1. Unless terminated at an earlier date, the zoning vested rights shall be valid until (Insert date)."
- B. A building permit shall not expire or be revoked because of the passage of time while a zoning vested right under this section is outstanding.
- C. A right which has been vested as provided in this section shall terminate at the end of the applicable vesting period with respect to portions of the development that do not have

approved and continuously valid site plans and preliminary plats, or buildings and uses for which no valid building permit applications have been filed.

3.20.7 Termination

A zoning vested right as provided in this section shall terminate when any one of the following circumstances apply:

- A. At the end of the applicable vesting period;
- B. With the written consent of the affected landowner;
- C. Upon findings by the governing body by ordinance and after public hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific development plan;
- D. Upon payment of compensation to the affected owner for all costs, expenses, and other losses incurred by the landowner together with interest;
- E. Upon findings by the governing body by ordinance and after public hearing, that the landowner or the landowner's representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the governing body of the site specific development plan; or
- F. Upon the enactment of a State or Federal law or regulation or local ordinances enacted in compliance with such laws or regulations that preclude development as contemplated in the site specific development plan.

3.20.8 Annexation

- A. Property that is annexed shall retain any vested rights throughout the original vesting period subject to the limitations of paragraph B below.
- B. A property owner petitioning for annexation shall submit a signed statement declaring any existing vested right with respect to the properties subject to annexation, if the owner wishes to maintain the vested right. The failure to sign such a statement shall terminate any such vested right.

3.20.9 Limitations

Nothing in this section shall be deemed to create any vested rights other than those established under NCGS §160A-385.1 or NCGS §153A-344.1. In the event that either NCGS §160A-385.1 or NCGS §153A-344.1 is repealed, the provisions of this section are no longer effective to the jurisdiction involved.

Sec. 3.21 Floodplain Development Permit

3.21.1 Applicability

A floodplain development permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas.

3.21.2 Floodplain Administrator

A. Designation

The Inspections Director, or designee, shall serve as the Floodplain Administrator. For this purpose, the Inspections Director, or designee, shall receive training and certification from the Association of Floodplain Managers.

B. Duties and Responsibilities

Duties of the Floodplain Administrator shall include, but not be limited to:

1. Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas to assure that the requirements of this ordinance have been satisfied;
2. Advise permittees that additional Federal or State permits (i.e., Wetlands, Erosion and Sedimentation Control, Riparian Buffers, Mining, etc.) may be required, and if specific Federal or State permits are known, require that copies of such permits be provided and maintained on file with the floodplain development permit;
3. Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency;
4. Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished;
5. Prevent encroachments within floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of 8.4.3E, Floodway and Non-Encroachment Areas, are met;
6. Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) of all attendant utilities of all new or substantially improved structures, in accordance with the certification requirements in Sec. 3.21, Floodplain Development Permit;
7. Obtain the actual elevation (in relation to mean sea level) to which the new or substantially improved structures and all utilities have been floodproofed, in accordance with the certification requirements in Sec. 3.21, Floodplain Development Permit;
8. Obtain actual elevation (in relation to mean sea level) of all public utilities, in accordance with the certification requirements in Sec. 3.21, Floodplain Development Permit;
9. When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the certification requirements in Sec. 3.21, Floodplain Development Permit and paragraph 8.4.3, Standards;

10. Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas or Future Conditions Flood Hazard Areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this Article;
11. When Base Flood Elevation (BFE) data has not been provided in accordance with paragraph 8.4.2, Applicability, obtain, review, and reasonably utilize any Base Flood Elevation (BFE) data, along with floodway data and/or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to paragraph 8.4.3.C, Floodplains without Base Flood Elevations, in order to administer the provisions of this ordinance;
12. When Base Flood Elevation (BFE) data is provided but no floodway nor non-encroachment area data has been provided in accordance with paragraph 8.4.2, Applicability, obtain, review, and reasonably utilize any floodway data, and/or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this ordinance;
13. When the lowest ground elevation of a parcel or structure located within Zone AE is above the Base Flood Elevation (BFE), advise the property owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA. Maintain a copy of the Letter of Map Amendment (LOMA) issued by FEMA in the floodplain development permit file;
14. Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection, subject to the Privacy Act of 1974, as amended;
15. Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the Floodplain Administrator, or designee, has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action;
16. Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor;
17. Revoke floodplain development permits as required. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any

floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked;

18. Make periodic inspections throughout all Special Flood Hazard Areas within the jurisdiction of the community. The floodplain administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action;
19. Maintain a current map repository to include, but not limited to, the FIS Report, FIRM and/or other official flood maps/studies adopted under paragraph 8.4.2, Applicability, including any revisions thereto including Letters of Map Change, issued by the State and/or FEMA. Notify State and FEMA of mapping needs; and
20. Follow through with corrective procedures of Sec. 15.6, Floodplain and Flood Damage Protection Enforcement and Penalties.
21. Maintain records of all floodplain development permits, actions by the Development Review Board, and major special use permits approving fill or development in Special Flood Hazard Areas and Future Conditions Flood Hazard Areas and report on them to the Federal Emergency Management Agency upon request.

3.21.3 Base Flood Elevations

A. Basis for Determination in Mapped Areas

Base flood elevations shall be based upon the Flood Insurance Rate studies described in paragraph 8.4.2, Applicability, when such studies define a base flood elevation.

- #### **B.**
- Development, including the construction of structures that only require building permits and land disturbing activity within Special Flood Hazard Areas or Future Conditions Flood Hazard Areas, as identified by the Federal Emergency Management Agency in the most current Flood Insurance Rate Studies, which are hereby adopted by reference and declared to be a part of this section, shall be prohibited unless carried out pursuant to the general standards in paragraph 8.4.3, Standards, or expressly authorized pursuant to paragraph 8.4.4, Development in Special Flood Hazard Areas and Future Conditions Flood Hazard Areas.

C. When Base Flood has not been Determined

1. When base flood elevations have not been determined, the Inspections Director, or designee, acting as the Floodplain Administrator, may require FEMA accepted hydrologic and hydraulic engineering studies, or may obtain, review, and reasonably utilize any base flood elevation data and floodway or non-encroachment area data available from a Federal, State, or other source in determining the appropriate base flood elevation.
2. On small streams where no base flood data has been provided, no encroachments, including fill, new construction, substantial improvements or new development, shall be permitted within the setbacks established in Sec. 8.5, Riparian Buffer Protection Standards, or Sec. 8.7, Watershed Protection Overlay Standards, or 20 feet each side from top of bank, or five times the width of the stream, whichever is greatest.

3.21.4 Application Requirements

- #### **A.**
- Application for a floodplain development permit shall be made to the Floodplain Administrator, or designee, prior to any development activities proposed to be located within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas. The following

items/information shall be required as part of the application for a floodplain development permit:

- 1.** A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
 - a.** the nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, the location of utility systems, proposed grading/pavement areas, fill materials, storage areas, drainage facilities, and other proposed development;
 - b.** the boundary of the Special Flood Hazard Area or Future Conditions Flood Hazard Areas as delineated on the FIRM or other flood map as determined in paragraph 8.4.2, Applicability, or a statement that the entire lot is within the Special Flood Hazard Area or Future Conditions Flood Hazard Areas;
 - c.** flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in paragraph 8.4.2, Applicability;
 - d.** the boundary of the floodway(s) or non-encroachment area(s) as determined in paragraph 8.4.2, Applicability;
 - e.** the Base Flood Elevation (BFE) or future conditions flood elevation where provided as set forth in paragraph 8.4.2, Applicability; paragraph 3.21.2B (11 and 12), Duties and Responsibilities; or paragraph 8.4.3, Standards;
 - f.** the old and new location of any watercourse that will be altered or relocated as a result of proposed development; and
 - g.** preparation of the plot plan by or under the direct supervision of a registered land surveyor or professional engineer and certified by same.
- 2.** Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area or Future Conditions Flood Hazard Area including but not limited to:
 - a.** elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
 - b.** elevation in relation to mean sea level to which any non-residential structure in Zone AE, A, AO, or X (Future) will be flood-proofed; and
 - c.** elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed.
- 3.** If floodproofing, a floodproofing certificate and back-up plans from a registered professional engineer or architect certifying that the non-residential flood-proofed development will meet the flood-proofing criteria in paragraph 8.4.3, Standards.
- 4.** A Foundation Plan drawn to scale which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include but are not limited to:

- a. Proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/piers); and
 - b. Should solid foundation perimeter walls be used in Zones AE and Zone X (Future), details of sufficient openings to facilitate the unimpeded movements of floodwaters in accordance with paragraph 8.4.3, Standards.
5. Usage details of any enclosed space below the regulatory flood protection elevation;
6. Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage;
7. Copy of all other Local, State and Federal permits required prior to floodplain development permit issuance (i.e. Wetlands, Erosion and Sedimentation Control, Riparian Buffers, Mining, etc.);
8. If floodplain development permit is issued for placement of Recreational Vehicles and/or Temporary Structures, documentation to ensure the recreational vehicle and temporary structure requirements of paragraph 8.4.3, Standards are met; and
9. If a watercourse is proposed to be altered and/or relocated, a description of the extent of watercourse alteration or relocation; an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

3.21.5 Floodplain Development Permit Data Requirements

The following information shall be provided at a minimum on the floodplain development permit to ensure compliance with this code:

- A. A description of the development to be permitted under the floodplain development permit issuance;
- B. The Special Flood Hazard Area or Future Conditions Flood Hazard Area determination for the proposed development per available data specified in paragraph 8.4.2, Applicability;
- C. The regulatory flood protection elevation required for the reference level and all attendant utilities;
- D. The regulatory flood protection elevation required for the protection of all public utilities;
- E. All certification submittal requirements with timelines;
- F. State that no fill material shall encroach into the floodway or non-encroachment area of any watercourse, if applicable;
- G. The flood openings requirements, if in Zone AE, A, O or X (Future).

3.21.6 Certification Requirements

- A. An Elevation Certificate (FEMA Form 81-31) or Floodproofing Certificate (FEMA Form 81-65) is required after the reference level is completed. Within twenty-one (21) calendar days of establishment of the reference level elevation, or floodproofing, by whatever construction means, whichever is applicable, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, or floodproofed elevation, whichever is applicable in relation to mean sea level. Said certification shall be prepared by or under the direct supervision of a registered land

surveyor or professional engineer and certified by same. When floodproofing is utilized, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work done within the twenty-one (21) day calendar period and prior to submission of the certification shall be at the permit holder's risk. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the certification or failure to make said corrections required shall be cause to issue a stop-work order for the project.

- B. A Final As-Built Elevation Certificate (*FEMA Form 81-31*) or Floodproofing Certificate (*FEMA Form 81-65*) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation or floodproofed elevation of the reference level and all attendant utilities. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When floodproofing is utilized, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make said corrections required shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.
- C. If a manufactured home is placed within Zone AE, A, AO, or X (Future) and the elevation of the chassis is above 36 inches in height, an engineered foundation certification is required per paragraph 8.4.3, Standards.
- D. If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.
- E. Certification Exemptions. The following structures, if located within Zone AE, A, AO, or X (Future), are exempt from the elevation/floodproofing certification requirements specified in items 1 and 2 above:
 - 1. Recreational Vehicles meeting requirements of recreational vehicles in paragraph 8.4.3, Standards;
 - 2. Temporary Structures meeting the temporary structure requirements of paragraph 8.4.3, Standards; and
 - 3. Accessory Structures less than 150 square feet meeting accessory structure requirements of paragraph 8.4.3, Standards.

Sec. 3.22 Limited Agriculture Permit (City Only)

3.22.1 Applicability

The review procedures described below apply to the types of applications listed below, as may be limited by the individual subsections that follow.

3.22.2 Application Requirements

A limited agriculture permit application shall be submitted in accordance with paragraph 3.2.4, Application Requirements.

- A.** The application shall be signed by the owner of the subject property, and such signature shall be notarized.
- B.** The applicant shall provide notice of the permit application to, and seek consent from, each owner of adjacent property using a notice and consent form provided by the Planning Director or designee. A completed form shall be sent by certified mail to each owner, and a copy of such form shall be sent by first class mail to the resident of the property, if different. A copy of the relevant sections of this Ordinance shall be sent with each form or copy.
- C.** Failure of any adjacent property owner to respond within 30 days of the mailing date shall be deemed consent by such property owner.
- D.** The applicant shall submit a copy of each mailed notice and consent form with proof of mailing along with any returned forms to the Planning Director or designee 30 days or later from the last mailing date, or may submit them earlier if all forms sent have been returned.
- E.** If any property owner denies consent, the Planning Director or designee shall conduct an informal administrative review with the applicant and non-consenting property owner to determine whether issuance of a permit would likely result in an ordinance violation or otherwise create a nuisance or detriment to public health or safety or cause significant hardship or injury due to site conditions or personal considerations. The Planning Director or designee shall notify the applicant and non-consenting property owner(s) of the date, time, and location of the review by First Class Mail, mailed at least two weeks in advance, and request that each attend, submit a written statement, or appear by telephone. Failure of any non-consenting property owner to attend, submit a written statement, or appear by telephone shall be deemed a change to consent by such property owner. Following the administrative review, the Planning Director or designee shall set forth in writing the determination and shall furnish a copy thereof to any person requesting the same. The permit shall be denied if the Planning Director or designee determines that issuance would likely cause a result identified above.

3.22.3 Action by the Planning Director

Upon review of the application and subject to the requirements of paragraph 3.22.2, Application Requirements, the Planning Director or designee shall approve the limited agriculture permit provided the limited agriculture meets all requirements of this Ordinance, except that misrepresentation including forgery by an applicant shall result in permit denial.

3.22.4 Expiration and Revocation

- A.** A limited agriculture permit shall expire if the use is not inspected for compliance within 180 days from the date of issuance.
- B.** The limited agriculture permit shall be revoked if the limited agriculture is found to be in violation of the requirements of this Ordinance, and as otherwise stated in paragraph 5.4.12, Limited Agriculture.

3.22.5 Appeal

Final action on a limited agriculture permit can be appealed in accordance with Sec. 3.15, Appeal of Administrative Decision.

Sec. 3.23 Architectural Review

3.23.1 Applicability

The review procedures described below apply to changes to building elevations where compliance with architectural standards is required, but no site plan approval or certificate of appropriateness is otherwise required. The requirements of paragraph 3.23.2B below also apply where architectural drawings are required for site plan approval.

3.23.2 Application Requirements

- A.** An architectural review application shall be submitted in accordance with paragraph 3.2.4, Application Requirements. Architectural review application documents shall contain, at a minimum, the information listed below unless expressly exempted by another provision of this Ordinance or if the Planning Director or designee makes the determination that less detailed information is required for adequate review. No processing or review of an architectural review application will proceed without the required information.
- B. General Requirements**
 - 1. Title Block - Name of project, type of review labeled: Architectural Review; submittal and revision dates; sheet size 36" x 48" maximum with index map and match lines if multiple sheets are required; graphic scale (not smaller than one inch to 32 feet on a standard architectural scale); property identification number.
 - 2. Name, address and telephone number of owner, applicant and agent; name, address and telephone number of architect or other designer.
 - 3. Elevations of all building facades, to scale, and labeled with materials, colors, finished floor elevations, glazing calculations, and other details as necessary to demonstrate compliance with applicable standards.

3.23.3 Action by the Planning Director

Upon review of the application and subject to the requirements of paragraph 3.23.2, Application Requirements, the Planning Director or designee shall approve the architectural review application provided the design meets all applicable requirements of this Ordinance. An architectural review approval shall expire after four years unless a building permit or other development permit has been issued and remains continuously valid or if work not requiring a permit has been initiated, except that an architectural review application that proposes amending an approved site plan shall be considered a site plan amendment under paragraph 3.7.3C, Site Plan Amendments, and its approval shall expire at the same time as the approved site plan as amended.

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